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The American Political Science Review

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THE AGRARIAN DEMOCRACY OF THOMAS JEFFERSON

A. WHITNEY GRISWOLD

Yale University

If the past determines or in any way influences the present, the present invariably reverses the process. One of the more striking instances of this rule has been the recent apotheosis of Thomas Jefferson as a national hero equal in stature to Washington and Lincoln. In an atmosphere of industrialism, urban living, and strong, impersonal national government that tradition might lead us to suppose would kill it, the Jefferson legend has blossomed and put forth new shoots. As Mr. Douglass Adair has pointed out,[1] the pioneer democrat and agrarian liberal "discovered" by Frederick Jackson Turner and Charles A. Beard and celebrated by Parrington, Nock, and Bowers, has lately found more complicated, more interesting, and incidentally more timely, portrayal at the hands of Carl Becker, Gilbert Chinard, and Adrienne Koch. These writers, whose company is now joined by Mr. Joseph Dorfman, have been at pains to show the range and diversity of Jefferson's thought, and above all how he moved with his times to espouse the cause of commerce, industry, and national power. Mr. Dorfman crowds all these qualities together under the label, "Thomas Jefferson: Commercial Agrarian Democrat"[2] which, if the trend continues, may have to be stretched to "Commercial Industrial Agrarian Democratic Federalist."

Does the label fit? The legendary Jefferson was an agrarian; and even as modern scholars were finding in his writings political precepts for an industrial age, the farmers of the United States were

[1] "The New Thomas Jefferson," *William and Mary Quarterly*, Jan., 1946, pp. 123–133.

[2] *The Economic Mind in American Civilization*, I, 433–447.

recognizing him as the founder of American agriculture and adopting him as their patron saint. Jefferson was not an agrarian fundamentalist; he did move with his times. No doubt the highly moral nature of his interest in public affairs and his pragmatic attitude would have led him, in the modern setting, to seek his end by modern means. Yet he started and ended life an agrarian at heart, and it was against an agrarian background that he saw his ideal of American democracy most clearly. So congenial was this background to him, and so vividly does it continue to display itself behind his legend, that it cannot be painted out of the portrait of Jefferson in modern dress.

The agrarian tradition has thrived on the legend and *vice versa*; witness the ceremonies attending the two hundredth anniversary of Jefferson's birth, in 1943. In that critical war year, with the democracy he helped to found engaged in a struggle for its life, the whole American agricultural community paid tribute to him "as a man of abiding passion for human liberty and the sacred rights of the common people, and as one who, throughout his entire career, remained preëminently and above all a farmer." So runs the preamble to a joint resolution of Congress establishing the National Agricultural Jefferson Bicentenary Committee, representing the Department of Agriculture, the land-grant colleges, the national farm organizations, the agricultural press, scientific and learned societies dealing with agriculture, and the Office of Education. In this preamble, as in the nation-wide ceremonies held under the auspices of the Bicentenary Committee, the two dominant and interrelated themes are agrarianism and democracy:

"Whereas throughout his whole social philosophy runs a theme which recognizes the dignity of the agricultural way of life and a deep appreciation of the satisfactions which accrue, through science, education, and faith, to the farm family and the rural community; and

"Whereas he recognized the importance of the perpetuation of a sound agriculture as a paramount factor in the development of the economy and the permanence of our national institutions".[3]

Jefferson was not the only founding father to practice farming or to hold these views; yet it was he above all who bequeathed them

[3] *Senate Joint Resolution* 47, *House Joint Resolution* 114. For text of this resolution and activities of the Bicentenary Committee, etc., see *Agricultural History*, Vol. 19, pp. 167–185.

to the country. George Washington, like George III, ran a model farm and corresponded with the British agricultural writer Arthur Young concerning its management. "Agriculture has ever been amongst the most favourite amusements of my life," he wrote Young in 1786, modestly deprecating his skill in the art.[4] James Madison served as president of the Albemarle Agricultural Society, founded at Charlottesville in 1817.[5] John Taylor, one of Jefferson's strongest and most articulate political supporters and a fellow-planter from Caroline county, Virginia, has been called "the philosopher and statesman of agrarianism,"[6] and "the philosopher of Jeffersonian democracy."[7] But in his numerous polemics and two principal works, *Arator* (1803) and *An Inquiry into the Principles and Policy of the United States* (1841), as, indeed, in his career in state and national politics, he displayed a dominant motive that set him apart from Jefferson in spirit, however identical their written opinions may seem. This motive was to defend his own particular interest as a large-scale planter and a country gentleman, whether in terms of an agrarian as opposed to an industrial economy or of states' rights versus federalism. Democracy, to him, meant the opportunity to maintain a commanding position in government and in society for a class of enlightened—and prosperous—planter aristocrats.[8] For

[4] Washington to Young, Aug. 6, 1786. F. Knight (ed.), *Letters on Agriculture from His Excellency George Washington, President of the United States, to Arthur Young, Esq., F.R.S., and Sir John Sinclair, Bart, M. P.*, p. 16.

[5] Paul H. Johnstone, "Old Ideals versus New Ideas in Farming," in *Farmers in a Changing World*, U. S. Dept. of Agr. Yearbook, 1940, p. 114.

[6] Charles A. Beard, *Economic Origins of Jeffersonian Democracy*, 322.

[7] B. F. Wright, Jr., "The Philosopher of Jeffersonian Democracy," in this REVIEW, Vol. 22, pp. 870–892.

[8] Cf. A. O. Craven, "John Taylor and Southern Agriculture," *Journal of Southern History*, Vol. 4 (1938), pp. 137–147; Bernard Drell, "John Taylor of Caroline and the Preservation of an Old Social Order," *Virginia Magazine of History and Biography*, Vol. 46 (1938), pp. 285–298; E. T. Mudge, *The Social Philosophy of John Taylor of Caroline* (1939), esp. pp. 5–6; M. J. Dauer and H. Hammond, "John Taylor: Democrat or Aristocrat?," *Journal of Politics*, Vol. 6 (1944), pp. 381–403. The findings of these authorities substantially qualify Taylor's theory of democracy, as, indeed, does a reading of *Arator* and the *Inquiry*, in which that belief is most fully expounded. From these documents it seems clear that Taylor's main interest was vested in the planter society to which he belonged, and the decline of whose economic fortunes he was trying to reverse (a) by an intelligent and far-sighted program of soil conservation as set forth in *Arator* and (b) by political actions and doctrines designed to check the advance of nationalism, commerce, and industry, and adding up to a dialectic of states' rights. Although Jefferson expressly acknowledged his indebtedness to Taylor, with whom he said he "rarely, if ever, differed in any political principle of importance" (Jefferson to Thomas Ritchie, Dec. 25, 1820, and same to

this reason, rather than because of the dullness and prolixity of his works, Taylor must be disqualified as official interpreter of Jefferson's agrarian and democratic ideals. We must read Jefferson in his own words, for no one combined those ideals in a working philosophy so deliberately as he, and with such lasting effect.

The ideals stand out most clearly in his social pattern of American agriculture. This, he believed, should consist of a community of small farmers, freemen unencumbered either by feudal obligations to a distant sovereign or by archaic practices of primogeniture or entail among themselves. One of his earliest political acts was to abolish these practices in Virginia. His draft of a constitution for the state, drawn up in June, 1776, contained, under the title of "Rights, Private and Public," the following provisions:

"Unappropriated or Forfeited lands shall be appropriated by the Administrator with the consent of the Privy council.

"Every person of full age neither owning nor having owned (50) acres of land, shall be entitled to an appropriation of (50) acres or to so much as shall make up what he owns or has owned (50) acres in full and absolute dominion. And no other person shall be capable of taking an appropriation.

"Lands heretofore holden of the crown in fee simple, and those hereafter to be appropriated shall be holden in full and absolute dominion, of no superior whatever."[9]

Later in the same year (October, 1776), he drafted and saw through the Virginia legislature bills abolishing primogeniture and entail,

Samuel Smith, Apr. 12, 1821, *Writings*, XII, pp. 176, 203), to read them both, side by side, is to sense the fundamental difference between them. Notwithstanding the fact that Jefferson's writings on democracy and agrarianism were brief and fragmentary while Taylor's were voluminous and systematic, Taylor's localism, both in time and place, and his intense partisanship make it impossible to accept him unreservedly as the philosopher of Jeffersonian democracy. An ardent agrarian he certainly was, going Jefferson one better in every claim of economic supremacy and moral perfection for agriculture. Likewise, as H. H. Simms (*Life of John Taylor*), Dauer and Hammond (*op. cit.*), and Arthur Schlesinger (*The Age of Jackson*) have depicted him, he was a last-ditch opponent of Federalism, more uncompromising than Jefferson himself. Yet he worked and thought primarily for a particular class at a particular time in a particular context of party politics; and these facts, together with his incredibly diffuse style, have limited his fame; while Jefferson's, resting on national achievement and universal principles, lives on. For all of these reasons, Jefferson seems a more authentic philosopher of Jeffersonian democracy than does Taylor.

[9] *Writings*, II, p. 179. All references to Federal Edition (P. L. Ford, ed.), New York, 1904, unless otherwise indicated.

thus preventing the creation and perpetuation of a landed aristocracy.[10]

The two measures—the constitutional provisions governing the acquisition of land and the law prohibiting its entailment—were conceived in the interest of the rank and file of frontier farmers, the constituency to which Jefferson entrusted his political fortunes. "The earth is given as a common stock for man to labour and live on," he wrote from Paris in 1785.

"If for the encouragement of industry we allow it to be appropriated, we must take care that other employment be provided to those excluded from the appropriation. If we do not the fundamental right to labour the earth returns to the unemployed. It is too soon yet in our country to say that every man who cannot find employment but who can find uncultivated land shall be at liberty to cultivate it, paying a moderate rent. But it is not too soon to provide by every possible means that as few as possible shall be without a little portion of land. The small land holders are the most precious part of a state."[11]

Looking back at his efforts on behalf of small landholders from the vantage point of 1944, Secretary of Agriculture Wickard acclaimed Jefferson as "father of the idea of the family-size farm."[12] Only four years earlier, a committee appointed by Wickard, representing all federal agencies concerned with agriculture, had reported:

"The U. S. Department of Agriculture believes that the welfare of agriculture and of the Nation will be promoted by an agricultural land tenure pattern characterized by efficient family-size owner-operated farms, and one of the continuing major objectives of the Department will be the establishment and maintenance of such farms as the predominating operating farm unit in the United States."[13]

Jefferson's pattern had survived a century and a half of trial and stress to become "a continuing major objective" of modern policy.

[10] *Ibid.*, pp. 268–271; I, pp. 58–59, 68–69, 77.

[11] Jefferson to Rev. James Madison (cousin of President Madison), Oct. 28, 1785. *Writings*, VIII, p. 196.

[12] Claude R. Wickard, "Thomas Jefferson—Founder of Modern American Agriculture," address delivered at Monticello, April 13, 1944, the 201st anniversary of Jefferson's birth. *Agricultural History*, Vol. 19, p. 179.

[13] M. Ezekiel, "Schisms in Agricultural Policy," *Journal of Farm Economics*, Vol. 24, p. 471.

How did Jefferson come by these ideas, so germinal to our democracy and so influential in its history? In a sense, it is not necessary to seek the answer beyond his own temperament and times. He was born to farming, as were most of his countrymen. He loved the land, trying again and again to escape to it from "the hated occupations of politics." His years at Monticello were unquestionably his happiest. "I return to farming with an ardor which I scarcely knew in my youth," he wrote Adams in 1794;[14] and in later years:

> "I have often thought that if heaven had given me choice of my position and calling, it should have been on a rich spot of earth, well watered, and near a good market for the productions of the garden. No occupation is so delightful to me as the culture of the earth . . . ."[15]

These were no idle sentiments. As his correspondence and notebooks show, his interest in farming was sincere and consistent throughout his life. They also reveal him as an experimental agriculturist of distinction. His observations and adaptations of European crops, livestock, and methods of farming put him in the vanguard of his contemporaries. He introduced the threshing machine in America and was one of the first importers of Merino sheep from Spain. His improved mold-board plow won him international awards. The agricultural societies he founded and encouraged and his plan to include scientific agriculture in the curriculum of the University of Virginia foreshadowed our whole national system of agricultural education. Instead of patenting his innovations and improvements, moreover, he gave them freely to the public, and instead of profiting from them, he ended his years in virtual bankruptcy. This he attributed to the "disgusting dish of politics" which had lured him from his chosen vocation and cost him his proficiency in it.[16] But his personal loss was the farmers' gain. It justifies his fame in agricultural circles, and it vividly bespeaks his personal interest in farming.

His political concern for agriculture was equally obvious. He had espoused the cause of the common man. At that time in our history,

[14] *Writings*, VIII, pp. 144–145.

[15] To Charles Willson Peale, Aug. 20, 1811. *Writings*, Library Edition (Lipscomb and Bergh eds.), Vol. 13, pp. 78–80.

[16] August C. Miller, Jr., "Jefferson as an Agriculturist," *Agricultural History*, Vol. 16, pp. 65–78; M. C. Wilson, "Thomas Jefferson—Farmer," American Philosophical Society *Proceedings*, Vol. 87, pp. 216–222.

the common man was a farmer. Ninety per cent of all Americans, common or uncommon, were farmers. To champion the people, therefore, was to champion agriculture, a political theorem no politician could deny, however lofty or disinterested his purposes. The character of these people and their geographical surroundings might have determined their economic life without benefit of political theory. Lack of capital and a wilderness that yielded only to hard, slow, manual labor made small-scale family farming the rule before Jefferson became its advocate. The tobacco, rice, and cotton plantations of his Southern compatriots were exceptions to the rule. It would be possible to ascribe his solicitude for the small landholders to an astute rationalization of things as they were among the largest and, to him, most sympathetic group of voters.

But Jefferson was more than a farmer and a politician. He was a serious student of philosophy. The diligence with which he applied himself to his philosophical studies, to a search for moral guidance and for counsels of law and government, is collateral for the sincerity of his political and economic ideas. We know from his letters and commonplace books the time and thought he devoted to the Greek and Latin classics, to Locke, Bolingbroke, Hume, Montesquieu, Adam Smith, Destutt de Tracy, and many another English and French writer represented on the shelves of his library.[17] We know from the Declaration of Independence, his principal state paper, the degree to which he had steeped himself in the natural rights philosophy of John Locke. During his residence in Paris (1784–1789), he made the acquaintance of the Physiocrat Du Pont de Nemours, and the economist Destutt de Tracy. Du Pont, who took up residence in America, and whose son founded the "gunpowder manufactory" that was eventually to gain un-Physiocratic fame as the eighth largest industrial corporation in the United States,[18] became one of Jefferson's closest intellectual friends. Their

[17] For Jefferson's philosophical and literary sources, see especially Adrienne Koch, *The Philosophy of Thomas Jefferson;* Carl Becker, *The Declaration of Independence;* G. Chinard (ed.), *The Commonplace Book of Thomas Jefferson, The Literary Bible of Thomas Jefferson,* and *The Correspondence of Thomas Jefferson and Du Pont de Nemours;* G. Chinard, *Thomas Jefferson: The Apostle of Americanism.*

[18] Based on financial assets in 1944. Figures in millions of dollars from Moody's *Manual of Investments, Industrial Securities, 1945,* showing the eight largest as follows:

Corporation	Assets
Standard Oil of N. J.	$2,349
General Motors	2,182

correspondence over a period of seventeen years (1800–1817) weighed and appraised not only the principles of Physiocracy but most of the leading ideas of government and political economy current at the time. Jefferson's admiration for Destutt de Tracy was extravagant. He translated and edited De Tracy's *Commentary and Review of Montesquieu's Spirit of Laws* and his *Treatise on Political Economy*, which he considered the leading works in "civil government" and political economy.[19] He persuaded the president of his *alma mater*, William and Mary, to adopt the *Commentary* as a text and appealed so enthusiastically about it to his friends that Du Pont, for one, accused him of having written it.[20]

What is of interest to us in all this intellectual trafficking is not the genealogy of Jefferson's ideas, at best a speculative theme, but their substance, the elements of which they were composed, the process of composition. Many of his ideas he translated into policy and handed down as tradition, among them that "continuing major objective" of agricultural policy for which he was acclaimed by Secretary Wickard in 1944. A tradition is best explained by its origin. It is not often that a founder of tradition lets us look so deeply into his first principles and purposes as does Jefferson in his scholarly notes and correspondence.

How, then, did he relate agrarianism to democracy in the meaning of our present inquiry? As to his democratic convictions and labors, his record, beginning with his enumeration of "inalienable rights" in the Declaration of Independence and concluding with the philosophical reflections of his old age, speaks for itself. In all his works he was the champion of those basic civil liberties and methods of popular government by which democracy enabled people to rule themselves and express themselves as individuals. There is scarcely an item in our national bill of rights, the first ten amendments to the Constitution, that is not directly traceable to his pre-

U. S. Steel	2,082
Socony-Vacuum Oil	1,057
Bethlehem Steel	1,032
Ford Motor Co.	1,009
Standard Oil of Ind.	945
E. I. Du Pont de Nem.	928

[19] Jefferson to Milligan, Oct. 25, 1818, in De Tracy, *A Treatise on Political Economy*, foreword.

[20] Chinard, *Correspondence of Jefferson and Du Pont*, p. 179; Koch, *op. cit.*, Chap. 7.

cept or example. "More than any other man," says Carl Becker, "we think of Jefferson as having formulated the fundamental principles of American democracy, of what we now like to call the American way of life."[21] The tribute is specific: Jefferson did not originate the fundamental principles, he "formulated" them. Jefferson was not an original thinker, but a representative one. His sensitive mind was a conductor for all the intellectual currents of his age. In a theoretical sense, he must share the credit for founding our democratic institutions with the philosophers whose ideas he borrowed and adapted. In a political sense, he must share it with Franklin, Adams, Washington, Hamilton, Madison, Marshall, and the other founders, some of whom history may judge more effective and practical than he. But for his definition of those institutions, his expression of them in letter and spirit in the critical period of their infancy, history judges him to have represented them more completely than any of his colleagues.

His general views on agriculture may require no more complicated explanation than, as already suggested, that they were perfectly logical deductions from his own tastes and environment. Undoubtedly he found moral support for them in his reading, especially in the classics. But the character of the views, their obviousness, generality, and fundamental simplicity, discourages a search for more specific doctrinal influences. The Physiocratic influence that is sometimes inferred in this connection has been discounted not only by historical scholars[22] but by Jefferson himself. The inference derived largely from their common emphasis upon agriculture, the similarity of the moral philosophy which both drew independently of each other from Locke, and from Jefferson's friendship with Du Pont. But Jefferson's homespun agrarianism stopped a long way short of the elaborate "arithmetical formularies," as Adam Smith called them,[23] by which the Physiocrats proved agriculture the sole source of wealth and a single tax upon its net product the sole method of public finance. As Chinard has pointed out,[24] Jefferson

[21] "The Political Philosophy of Thomas Jefferson," *American Historical Review*, Vol. 48, pp. 691–706.

[22] The fullest discussion and evidence on this point is to be found in Chinard, *Correspondence of Jefferson and Du Pont*, Introduction and *passim*. See also Dumas Malone, *Dictionary of American Biography*, Vol. X, p. 23; R. Hofstadter, "Parrington and the Jeffersonian Tradition," *Journal of the History of Ideas*, Vol. II, pp. 391–400.

[23] *Wealth of Nations*, Modern Library (Cannan) Edition, p. 637.

[24] *Thomas Jefferson*, p. 328.

was never an economist in the formal sense of the word. There is no trace of Physiocratic or any other systematic economic analysis in his writings. He did not make Du Pont's acquaintance until some time during his tour of duty in Paris, nearly a decade after he had formulated and published his political philosophy, and at least two years after he had done the same for his views on agriculture. These he had set forth in his *Notes on Virginia*, which he had written in 1781 and revised in the winter of 1782–1783. His exposure to the revolutionary intellectual ferment of Paris, far from revising his political opinions, strengthened them.

When he did enter into a specific discussion of Physiocratic economic policies in his correspondence with Du Pont, he exhibited a sturdy pragmatism and a practical sense of proportions which included commerce and industry, and to which, in the end, he partially converted Du Pont. Finally, in the "prospectus" to his edition of De Tracy's *Political Economy* he stated his preference for Adam Smith, J. B. Say, and De Tracy, and disposed of Physiocracy thus:

"Political Economy, in modern times, assumed the form of a regular science, first in the hands of the political sect in France, called the Economists. They made it a branch only of a comprehensive economic system, on the natural order of Societies. Quesnia (*sic*) first, Gournay, Le Trosne, Turgot, & Du Pont de Nemours, the enlightened, philanthropic, and venerable citizen now of the United States, led the way in these developments, and gave to our enquiries the direction they have since observed. Many sound and valuable principles, established by them, have received the sanction of general approbation. Some, as in the infancy of a science might be expected, have been brought into question, and have furnished occasion for much discussion; their opinions on production, and on the proper subjects of taxation, have been particularly controverted and whatever may be the merit of their principles of taxation, it is not wonderful that they have not prevailed, not on the questioned score of correctness, but because not acceptable to the people, whose will must be the supreme law. Taxation is, in fact, the most difficult function of government, and that against which, their citizens are most apt to be refractory. The general aim is, therefore, to adopt the mode most consonant with the circumstances and sentiments of the country."[25]

One fundamental difference between Jefferson and the Physiocrats brings out his own views on agriculture in sharp relief. The

[25] Destutt de Tracy, *A Treatise on Political Economy*, p. iii.

Physiocrats stood for large-scale farming and great estates, in conscious emulation of the British aristocracy. They represented a group of prosperous magistrates and bureaucrats then rising in French society, seeking (and gaining) titles, and determined, like the British, to make their newly-acquired estates pay. Quesnay, Mercier de la Rivière, and Du Pont himself were all men of this type. They believed in scientific estate farming, which they called *la grande culture;* and their single tax, which ensured the owner a comfortable margin of profit, was conceived in its interest.[26] The welfare of the peasants was to them of minor consideration, save in so far as all would gain from a simplification of the prevailing tax system. They favored, in other words, the interests of new and prosperous recruits to the landed aristocracy, and proposed detailed methods of furthering those interests.

Jefferson from the outset cast his lot with poor, frontier farmers and never, even in their interest, conceived of economic measures so complex in detail or specific in purpose as those of the Physiocrats. To him, agriculture was not primarily a source of wealth, but of human virtues and traits most congenial to popular self-government. It had a sociological rather than an economic value. This is the dominant note in all his writings on the subject. In Europe, he says in his *Notes on Virginia*, manufacturing was being promoted to support the surplus population that could not gain access to the land.

"But we have an immensity of land courting the industry of the husbandman. Is it best then that all our citizens should be employed in its improvement, or that half should be called off from that to exercise manufactures and handicraft arts for the other? Those who labor in the earth are the chosen people of God, if ever He had a chosen people, whose breasts He has made His peculiar deposit for substantial and genuine virtue. It is the focus in which He keeps alive that sacred fire, which otherwise might escape from the face of the earth. Corruption of morals in the mass of cultivators is a phenomenon of which no age nor nation has furnished an example. It is the mark set upon those, who, not looking up to heaven, to their own soil and industry, as does the husbandman, for their subsistence, depend for it on casualties and caprice of customers.

[26] Cf. M. Beer, *An Inquiry into Physiocracy;* G. Weulersse, *Le Mouvement Physiocratique en France de 1756 à 1770*, and *Les Physiocrates;* C. Gide and C. Rist, *A History of Economic Doctrines*, Chap. 1; L. H. Haney, *History of Economic Thought*, Chap. 9; N. J. Ware, "The Physiocrats," *American Economic Review*, Vol. 21, pp. 607–619.

Dependence begets subservience and venality, suffocates the germ of virtue, and prepares fit tools for the designs of ambition. This, the natural progress and consequence of the arts, has sometimes perhaps been retarded by accidental circumstances; but, generally speaking, the proportion which the aggregate of the other classes of citizens bears in any State to that of its husbandmen, is the proportion of its unsound to its healthy parts, and is a good enough barometer whereby to measure its degree of corruption. While we have land to labor, then, let us never wish to see our citizens occupied at a workbench, or twirling a distaff. Carpenters, masons, smiths, are wanting in husbandry; but, for the general operation of manufacture, let our workshops remain in Europe. It is better to carry provisions and materials to workmen there, than bring them to the provisions and materials, and with them their manners and principles. The loss by the transportation of commodities across the Atlantic will be made up in happiness and permanence of government. The mobs of great cities add just so much to the support of pure government, as sores do to the strength of the human body. It is the manners and spirit of a people which preserve a republic in vigor. A degeneracy in these is a canker which soon a ts to the heart of its laws and constitution."[27]

This is a recurrent theme: "Cultivators of the earth are the most valuable citizens. They are the most vigorous, the most independant [*sic*], the most virtuous, & they are tied to their country, & wedded to it's liberty & interests by the most lasting bonds. . . . I consider the class of artificers as the panders of vice & the instruments by which the liberties of a country are generally overturned."[28] Again: "I think our governments will remain virtuous for many centuries; as long as they are chiefly agricultural; and this will be as long as there shall be vacant lands in any part of America. When they get piled upon one another in large cities, as in Europe, they will become corrupt as in Europe."[29]

Jefferson never changed these views, though he never permitted them or any other theoretical consideration to obscure his sense of the practical. He had bitterly opposed Hamilton on the creation of a national bank (1790), going so far as to call the founding of the public debt an iniquitous and unconstitutional levy on farmers for the benefit of "stock-jobbers." Yet when he became President he maintained Hamilton's fiscal policies.[30] He had inherited the "half

[27] *Writings*, IV, pp. 85–86.
[28] To John Jay, Aug. 23, 1785. *Writings*, IV, pp. 449–450.
[29] To James Madison, Dec. 20, 1787. *Writings*, V, p. 374.
[30] Cf. J. Dorfman, "The Economic Philosophy of Thomas Jefferson," *Political*

lettered ideas of Hamilton," he explained to Du Pont, but they were law and he was bound to defend them. "We can pay off his debt in 15 years, but we can never get rid of his financial system. It mortifies me to be strengthened by principles which I deem radically vicious, but this vice is entailed on us by a just error." Then follows a sentence that provides the key to his whole character: "What is practicable must often countroul what is pure theory, and the habits of the governed determine in a great degree what is practicable."[31] He displays here that pragmatic empiricism which has governed Anglo-American political thought and action through history, confounding European critics in our time as it perplexed Du Pont in his. The logical Frenchman wanted things planned, ordered, consistent, directed from the top down, having no more faith than Hamilton in the capacity of the common people to know their own best interests. Jefferson's faith in the people was complete. He considered it "a duty in those entrusted with the administration of their affairs, to conform themselves to the decided choice of their constituents."[32] And toward the end of their long correspondence he admonished Du Pont: "We both consider the people as our children, and love them with parental affection. But you love them as infants whom you are afraid to trust without nurses, and I as adults, whom I freely leave to self-government."[33]

True to this basic philosophy, which not infrequently drew charges of hypocrisy from his enemies, when the people began to manifest an interest in commerce and industry, Jefferson went along with them. This is how he answered a direct query on the point in 1785:

"You ask what I think on the expediency of encouraging our States to be commercial? Were I to indulge my own theory, I should wish them to practice neither commerce nor navigation, but to stand, with respect to Europe, precisely on the footing of China. We should thus avoid wars, and all our citizens would be husbandmen. Whenever, indeed, our numbers should so increase as that our produce would overstock the markets of those nations who should come to seek it, the farmers must either employ the surplus of their time in manufactures, or the surplus of our hands must be employed in manufactures or in navigation. But that day would,

Science Quarterly, Vol. 55, pp. 98–121, and *The Economic Mind in American Civilization*, I, pp. 433–447.

[31] Jefferson to Du Pont, Jan. 18, 1802. Chinard, *Correspondence*, p. 37

[32] Jefferson to Du Pont, Apr. 24, 1816. *Ibid.*, p. 258.

[33] *Ibid.*

I think, be distant, and we should long keep our workmen in Europe, while Europe should be drawing rough materials, and even subsistence from America. But this is theory only, and a theory which the servants of America are not at liberty to follow."[24]

Again the practical qualifications, the acceptance of what was in place of what ought to be. A quarter-century later, he had moved so far with the times as to prescribe an "equilibrium of agriculture, manufactures, and commerce:"

"Manufactures, sufficient for our own consumption, of what we raise the raw material (and no more). Commerce sufficient to carry the surplus produce of agriculture, beyond our own consumption, to a market for exchanging it for articles we cannot raise (and no more). These are the true limits of manufactures and commerce. . . . These three important branches of human industry will then grow together, and be really handmaids to each other."[25]

Finally, in 1816, this thoroughgoing discussion of the matter:

"You tell me I am quoted by those who wish to continue our dependence on England for manufactures. There was a time when I might have been so quoted with more candor, but within the thirty years which have since elapsed, how are circumstances changed! We were then in peace. Our independent place among the nations was acknowledged. A commerce which offered the raw material in exchange for the same material after receiving the last touch of industry, was worthy of welcome to all nations. It was expected that those especially to whom manufacturing industry was important, would cherish the friendship of such customers by every favor, by every inducement, and particularly cultivate their peace by every act of justice and friendship. Under this prospect the question seemed legitimate, whether, with such an immensity of unimproved land, courting the hand of husbandry, the industry of agriculture or that of manufactures, would add most to the national wealth? And the doubt was entertained on this consideration chiefly, that to the labor of the husbandman a vast addition is made by the spontaneous energies of the earth on which it is employed: for one grain of wheat committed to the earth, she renders twenty, thirty, and even fifty fold, whereas to the labor of the manufacturer nothing is added. Pounds of flax, in his hands, yield, on the contrary, but pennyweights of lace. This exchange, too, laborious as it might seem, what a field did it promise for the occupations of the ocean; what a nursery

[24] Jefferson to Count Gysbert-Charles van Hogendorp, Oct. 13, 1785. *Writings*, IV, pp. 466–470.

[25] Jefferson to James Jay, Apr. 7, 1809. *Works*, Library Ed. (Lipscomb and Bergh), XII, pp. 270–271.

for that class of citizens who were to exercise and maintain our equal rights on that element? This was the state of things in 1785, when the 'Notes on Virginia' were first printed; when, the ocean being open to all nations, and their common right in it acknowledged and exercised under regulations sanctioned by the assent and usage of all, it was thought that the doubt might claim some consideration. But who in 1785 could foresee the rapid depravity which was to render the close of that century the disgrace of the history of man? Who could have imagined that the two most distinguished in the rank of nations, for science and civilization, would have suddenly descended from that honorable eminence, and setting at defiance all those laws established by the Author of nature between Nation and Nation, as between man and man, would cover earth and sea with robberies and piracies, merely because strong enough to do it with impunity; and that under this disbandment of nations from social order, we should have been despoiled of a thousand ships, and have thousands of our citizens reduced to Algerine slavery. Yet all this has taken place. . . . Compare this state of things with that of '85, and say whether an opinion founded in the circumstances of that day can be fairly applied to those of the present. We have experienced what we did not then believe, that there exists both profligacy and power enough to exclude us from the field of interchange with other nations: that to be independent for the comforts of life we must fabricate them ourselves. We must now place the manufacturer by the side of the agriculturist. The former question is suppressed, or rather assumes a new form. Shall we make our own comforts, or go without them, at the will of a foreign nation? He, therefore, who is now against domestic manufacture, must be either for reducing us to dependence on that foreign nation, or to be clothed in skins, and to live like wild beasts in dens and caverns. I am not one of these; experience has taught me that manufactures are as necessary to our independence as to our comfort. . . ."[36]

Several features of Jefferson's conversion are of interest. In the first place, it was incomplete. The farthest he would go was to approve a balanced, self-sufficient economy in which he expected agriculture to occupy the most important position. Secondly, it was reluctant: he attributed it to the "depravity" of the times. Thirdly, it was decided not on the merits of the question but by international politics and war. The Napoleonic wars were not the first in which American domestic issues had been confused by the whims and ambitions of foreign powers, nor would they be the last. Nevertheless, the dominant rôle they played in the conversion of Jeffer-

[36] Jefferson to Benjamin Austin, Jan. 9, 1816. *Writings*, XI, pp. 500–505.

son, if we may call it such, shows the extent to which the conversion was one of expediency rather than of principle. The world war in which we became a belligerent in 1812 forced him to forego as statesman and patriot views which, as farmer and philosopher, he never formally renounced. To the end of his days, agriculture remained the occupation nearest his heart, his ideal of a good society, a society of farmers.

We should say, as he did, a society of small farmers, for as we have seen, he considered these "the most precious part of a state." Assuming democracy to have been his *summum bonum* and agriculture its sociological (and economic) foundation, the composite political value that Jefferson expected agriculture to yield was individualism; and this was best cultivated on a small farm. For it was preëminently on a small farm that those qualities of independence and self-reliance, of "looking up to heaven, to their own soil and industry," that were most readily convertible into enlightened self-government were most thoroughly developed in men. Political independence depended upon social equality and economic security, all best provided by a small farm, in the modern phrase, a small, owner-operated, family-size farm. The tiller of another man's fields could never feel the sense of economic security nor the pride of possession of the independent farmer; still less could those dependent upon "casualties and caprice of customers . . . or twirling a distaff." Democracy meant self-government. Who would govern himself must own his soul. To own his soul, he must own property, the means of economic security. Private property was therefore a corollary to democracy, and land that produced the means of subsistence was the typical and most valuable form of private property. Thus we find in Jefferson's construction of the property right another link between his general principles of agrarianism and democracy.

A search for the basis of this construction leads back once more to Locke. "The earth is given as a common stock for man to labour and live on," Jefferson had written from Paris in 1785. The "right to labour the earth" was "fundamental." And in 1816, in a detailed summary of his political creed, he stated his belief "that a right to property is founded in our natural wants, in the means with which we were endowed to satisfy those wants, and the right to what we acquire by those means without violating the similar rights of other

sensible beings."[37] A century and a quarter earlier, Locke had written:

"God, who hath given the world to men in common, hath also given them reason to make use of it to the best advantage of life and convenience. The earth and all that is therein is given to men for the support and comfort of their being. And though all the fruits it naturally produces, and beasts it feeds, belong to mankind in common, as they are produced by the spontaneous hand of Nature, and nobody has originally a private dominion exclusive of the rest of mankind in any of them, as they are thus in their natural state, yet being given for the use of men, there must of necessity be a means to appropriate them some way or other before they can be of any use, or at all beneficial, to any particular men."[38]

Even the phrasing sounds like Jefferson's, and both echo the psalm Locke quotes as his authority: "The heaven, even the heavens, are the Lord's: but the earth hath he given to the children of men."[39]

Whether consciously or indirectly and unconsciously borrowed from Locke, Jefferson's theory of property was essentially Locke's. And what was Locke's in essence had evolved out of pre-Christian custom, Roman law, and medieval doctrine to find philosophical definition at Locke's hands and to be transmitted by him to most political philosophers of the eighteenth, and many of the nineteenth, centuries. By the time when Locke's ideas on property reached Jefferson, many tributaries had flowed into the stream, broad as it was even in Locke's day. The texts Jefferson studied at William and Mary, the authorities he consulted as a law student, the more specific writings, such as Kames' *Historical Law Tracts*, that he extracted in his commonplace book, all reflected the general sanction civilized society had long since placed upon the institution of private property.

The colonists had brought this sanction with them to America. The Protestant churches, to which most of them belonged, had improved upon it with the doctrine of the calling, according to which material possessions were a proof of virtue and a sign of heavenly grace.[40] Taxation without representation, the *cause célèbre* of the

[37] Jefferson to Du Pont, Apr. 24, 1816. Chinard, *Correspondence*, p. 258.

[38] Locke, *Two Treatises of Civil Government*, Book II, Chap. 5, par. 25.

[39] Psalm 115, verse 16.

[40] Cf. R. H. Tawney, *Religion and the Rise of Capitalism;* Max Weber, *The Protestant Ethic and the Spirit of Capitalism;* A. Whitney Griswold, "Three Puritans on Prosperity," *New England Quarterly*, Vol. 7, pp. 475–493.

Revolution, had made every American acutely conscious of the property right and its relation to government. The first resolution of the Declaration and Resolves of the First Continental Congress, October 14, 1774, proclaimed the right "to life, liberty and property." Jefferson's own draft of the Declaration on Taking up Arms, July 6, 1775, declared: "The political institutions of America, its various soils and climates opening certain resources to the unfortunate and to the enterprising of every country and ensured to them the acquisition and possession of property."[41] The first resolution of the famous Virginia Bill of Rights, written by George Mason, adopted June 12, 1776, and honored by imitation in both America and France, read:

> "That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot by any compact deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing happiness and safety."[42]

The right to private property was taken for granted, and the duty of the government to protect it assumed, by Jefferson when he sat down to compose the Declaration of Independence. His substitution of the more euphemistic "pursuit of happiness" for the word "property" in that document proved his skill as a propagandist rather than any deviation from these principles. That much, at least, is clear from his provisions for the appropriation of small landholdings "in full and absolute dominion" in the draft constitution he had submitted to the Virginia legislature before coming to Philadelphia, and from his law abolishing entails in October of the same year.[43]

Locke was to Jefferson what Jefferson is to the modern proponents of the family farm. Both summed up and expressed in undying form the political and social philosophies of their times and environments. Whereas we revere Jefferson as the author of the Declaration of Independence, his jealous contemporaries criticised that document alternately as "a commonplace compilation, its sentiments hacknied in Congress for two years before," and "as copied from Locke's treatise on government."[44] He himself ex-

[41] *Writings*, II, p. 113.
[42] H. S. Commager (ed.), *Documents of American History*, p. 103.
[43] Cf. above, p. 660.
[44] Jefferson to James Madison, Aug. 30, 1823. *Writings*, XII, pp. 306–309.

plained that he was not trying to invent new principles or ideas, "but to place before mankind the common sense of the subject, in terms so plain and firm as to command their respect"; that the Declaration was intended as "an expression of the American mind" based on "the harmonizing sentiments of the day."[45] What better proof is there of the influence of Locke upon Jefferson and his colleagues than that what one could take for a copy of Locke another could take as "sentiments hacknied in Congress," and Jefferson himself as "the common sense of the subject" and "the harmonizing sentiments of the day?"

It is true that in England Locke's ideas on property were construed in the interest of the rich as well as the poor. But to Jefferson they provided the moral basis for his pattern of small landowners. The substance of these ideas was that the right to private property existed in the state of nature that preceded formal government. Although the earth and its fruits were given to mankind in common, a man's person and his labor were his and his alone. "Whatsoever, then, he removes out of the state that Nature hath provided and left it in, he hath mixed his labour with it, and joined to it something that is his own, and thereby makes it his property."[46] By picking up fruit, or tilling a field, or filling his pitcher at a fountain, a man appropriated exclusively to himself what was given by nature to all men equally and in common, with two important qualifications. There must be "enough, and as good left in common for others."[47] And no one must take more than he can use. Upon this second qualification Locke placed special emphasis:

> "It will, perhaps, be objected to this, that if gathering the acorns or other fruits of the earth, etc., makes a right to them, then any one may engross as much as he will. To which I answer, Not so. The same law of Nature that does by this means give us property, does also bound that property too. 'God has given us all things richly.' Is the voice of reason confirmed by inspiration? But how far has He given it us—'to enjoy'? As much as any one can make use of to any advantage of life before it spoils, so much may he by his labour fix a property in. Whatever is beyond this is more than his share, and belongs to others."[48]

Applied to land, which Locke called "the chief matter of property," this meant "as much land as a man tills, plants, improves,

[45] Jefferson to Henry Lee, May 8, 1825. *Writings*, XII, pp. 408–409.
[46] Locke, *Two Treatises of Civil Government*, Book II, par. 26.
[47] *Ibid.* [48] *Ibid.*, par. 30.

cultivates, and can use the product of."[49] Thus defined and qualified, the natural right to private property must be recognized and protected by government as a basic condition of the social order.[50]

Locke's suggestion of the labor theory of value, though of great consequence to later socialist thought, is not so important to our understanding of Jefferson as the simple limitations he put upon ownership. The first, that there should be "enough, and as good left in common for others," recurs in Jefferson's frequent allusions to the frontier, the great abundance of land that he hoped would govern our compromise with commerce and manufacturing and keep us primarily an agricultural people. Locke, too, entertained this hope and expressly related it to America. After concluding that labor gave a right to property which, where land was plentiful, could be freely and equally exercised by all men, he was forced to admit that, in some parts of the world, the increase of population and livestock "with the use of money" had made land scarce and thus caused its distribution to be regulated "by compact and agreement." This departure from the state of nature was caused primarily by the use of money as a medium of exchange. With it came "a disproportionate and unequal possession of the earth—I mean out of the bounds of society and compact; for in governments the laws regulate it; they having, by consent, found out and agreed in a way how a man may, rightfully and without injury, possess more than he himself can make use of by receiving gold and silver. . . ."[51] Where there was plenty of land and a minimum of commerce, "there men will not be apt to enlarge their possessions of land, were it never so rich, never so free for them to take."

"For I ask, what would a man value ten thousand or an hundred thousand acres of excellent land, ready cultivated and well stocked, too, with cattle, in the middle of the inland parts of America, where he had no hopes of commerce with other parts of the world, to draw money to him by the sale of the product? It would not be worth the enclosing, and we should see him give up again to the wild common of Nature whatever was more than would supply the conveniences of life, to be had there for him and his family.

[49] *Ibid.*, par. 31.

[50] Locke, *Of Civil Government*, Book II, Chap. 5. Cf. Paschal Larkin, *Property in the 18th Century with Special Reference to England and Locke*, esp. Chap. 3; S. P. Lambrecht, *The Moral and Political Philosophy of John Locke*, pp. 123–125; R. I. Aaron, *John Locke*, pp. 279–280.

[51] Locke, *Of Civil Government*, Book II, pars. 45–50.

"Thus, in the beginning, all the world was America . . . ."[52]

Here, surely, was confirmation if not inspiration for Jefferson's agrarianism as well as for his ideal community of small landholders. While Locke was more interested in establishing the right to private property than in promoting its equal division, to Jefferson both were important. Like Locke, he wished to make the strongest possible political case for the principle, as Locke put it, that "the supreme power cannot take from any man any part of his property without his own consent."[53] On the other hand, he was more concerned with the principles of democracy than Locke and strove more conscientiously to extend them into the economic realm. If Locke supplied him a virtually complete political case in favor of private property, what conclusion could he have drawn from the notion of a fall from grace, when "all the world was America," other than that commerce was the enemy of democracy and America must be kept agricultural as long as possible? Locke drew it for him, arguing that an essentially equal division of land was inherent in the natural limits of each individual's labor resources and capacity to consume, and that no matter how overcrowded the rest of the world, this law of nature held true for America.

"The same measure may be allowed still, without prejudice to anybody, full as the world seems. For supposing a man or family, in the state they were at first, peopling of the world by the children of Adam or Noah, let him plant in some inland vacant places of America. We shall find that the possessions he could make himself, upon the measures we have given, would not be very large, nor, even to this day, prejudice the rest of mankind or give them reason to complain or think themselves injured by this man's encroachment . . . ."[54]

Locke took full moral advantage of the economic conditions of frontier farming, leaving it to Jefferson to interpret its political significance.

Locke's second limitation on landowning—that it should not exceed what a man could put to his own use—reappears implicitly in Jefferson's laws abolishing primogeniture and entail and almost literally in his explanation of those laws. So vital did he consider them that he obtained leave from Congress soon after the adoption of the Declaration of Independence to return to the Virginia legislature and see that they were carried out in his own state. He first brought in a bill, he tells us in his *Autobiography*, doing away with

[52] *Ibid.*, pars. 48, 49. [53] *Ibid.*, par. 138. [54] Locke, *ibid.*, par. 36.

entail, the means by which "a distinct set of families who, being privileged by law in the perpetuation of their wealth, were thus formed into a Patrician order."

"To annul this privilege, and instead of an aristocracy of wealth, of more harm and danger, than benefit, to society, to make an opening for the aristocracy of virtue and talent, which nature has wisely provided for the direction of the interests of society, and scattered with equal hand through all it's conditions, was deemed essential to a well ordered republic. To effect it no violence was necessary, no deprivation of natural right, but rather an enlargement of it by a repeal of the law. For this would authorize the present holder to divide the property among his children equally, as his affections were divided; and would place them by natural generation on the level of their fellow citizens."[55]

Next he turned his attention to primogeniture:

"As the Law of Descents, & the criminal law fell of course within my portion, I wished the commee [*sic.*] to settle the leading principles of these, as a guide for me in framing them. And with respect to the first, I proposed to abolish the law of primogeniture, and to make real estate descendible in parcenary to the next of kin, as personal property is by the statute of distribution. Mr. Pendleton wished to preserve the right of primogeniture, but seeing at once that that could not prevail, he proposed we should adopt the Hebrew principle, and give a double portion to the elder son. I observed that if the eldest son could eat twice as much, or do double work, it might be a natural evidence of his right to a double portion; but being on a par in his powers & wants, with his brothers and sisters, he should be on a par also in the partition of the patrimony, and such was the decision of the other members."[56]

These bills he considered "as forming a system by which every fibre would be eradicated of ancient or future aristocracy; and a foundation laid for a government truly republican."

"The repeal of the laws of entail would prevent the accumulation and perpetuation of wealth in select families, and preserve the soil of the country from being daily more and more absorbed in Mortmain. The abolition of primogeniture, and equal partition of inheritances, removed the feudal and unnatural distinctions which made one member of every family rich, and all the rest poor, substituting equal partition, the best of all Agrarian laws."[57]

Inasmuch as he wrote these words in 1821, at the age of seventy-seven, we may accept them as final views on the subject of agricultural land-holding.

[55] *Writings*, I, pp. 58–59. [56] *Ibid.*, pp. 68–69. [57] *Ibid.*, pp. 77–78.

Jefferson was too shrewd a politician, however, to believe that a perfectly equal division of the land was possible. It was another of those ideals that he tried to realize pragmatically, as practical politics and human nature would permit. Yet it was an ideal. In the letter he wrote from Fontainbleau to the president of William and Mary in 1785, the conclusion of which we have already quoted,[58] he reduced the whole subject to its simplest terms. He was inspired to write by a chance encounter with an old peasant woman, who had guided him on a walk through the countryside and answered his questions about "the condition of the laboring poor." When he rewarded her for this service with twenty-four *sous*, she had burst into tears of gratitude.

"This little attendrissement, with the solitude of my walk, led me into a train of reflections on that unequal division of property which occasions the numberless instances of wretchedness which I had observed in this country & is to be observed all over Europe. The property of this country is absolutely concentrated in a very few hands, having revenues of from half a million of guineas downwards. These employ the flower of the country as servants, some of them having as many as 200 domestics, not labouring. They employ also a great number of manufacturers, & tradesmen, & lastly the class of labouring husbandmen. But after all there comes the most numerous of all the classes, that is, the poor who cannot find work. I asked myself what could be the reason that so many should be permitted to beg who are willing to work, in a country where there is a very considerable proportion of uncultivated lands? These lands are undisturbed only for the sake of game. It should seem then that it must be because of the enormous wealth of the proprietors which places them above attention to the encrease [*sic.*] of their revenues by permitting these lands to be labored. I am conscious that an equal division of property is impracticable. But the consequences of this enormous inequality producing so much misery to the bulk of mankind, legislators cannot invent too many devices for subdividing property, only taking care to let their subdivisions go hand in hand with the natural affections of the human mind."[59]

There followed an endorsement of the equal inheritance of property, a suggestion for "silently lessening the inequality of property" by exempting from taxation all below a certain point and taxing all above it "in geometrical progression as they rise." The letter then concluded with the passage calling for individual ownership

[58] Cf. above, p. 660.

[59] Jefferson to Rev. James Madison, Oct. 28, 1786. *Writings*, VIII, pp. 194–196.

of "a little portion of land" and ending: "The small landholders are the most precious part of a state."

John Locke's *Second Treatise of Civil Government* was not the only literary source of Jefferson's theory of property, though it was certainly the most important one. In the *Historical Law Tracts* of the Scottish jurist Lord Kames (published 1758), he found an up-to-date version of Locke's property concepts that appealed to him so much that he copied long sections of it in his commonplace book. In these are to be found sentiments as congenial to both Locke and Jefferson as: "Man, by his nature is fitted for society, and society by its conveniences, is fitted for man. The perfection of human society, consists in that just degree of union among individuals, which to each reserves freedom and independency, as far as is consistent with peace and good order."[60] By bestowing his labor upon it, a man "contracts an affection for a spot" and a proprietary interest in it. Thus land acquires "stability of property."[61] Entails were "subversive of industry and commerce," "a curse," "a snare to the thoughtless proprietor . . . to the cautious . . . a perpetual source of discontent, by subverting that liberty and independency, to which all men aspire with respect to their possessions as well as their persons."[62] James Madison also studied Locke and reciprocated Jefferson's views on property.[63] Adam Smith, whose classic work Jefferson once called "the best book extant in political economy,"[64] not only shared his preference for small farms, but also helped him to see the error of the Physiocrats' ways and to appreciate the interrelationship of agriculture, commerce, and industry:

"The beauty of the country besides, the pleasures of a country life, the tranquillity of mind which it promises, and wherever the injustice of human laws does not disturb it, the independency which it really affords, have charms that more or less attract everybody; and as to cultivate the ground was the original destination of a man, so in every stage of his existence he seems to retain a predilection for this primitive employment."[65] . . . A small proprietor, however, who knows every part of his little territory, who views it all with the affection which property, especially small property, naturally inspires, and who upon that account takes pleasure not only in cultivating but in adorning it, is generally of all

[60] Chinard, *Commonplace Book*, p. 107.

[61] *Ibid.*, pp. 110–111. [62] *Ibid.*, p. 117.

[63] Larkin, *Property in the Eighteenth Century*, 156–157; E. McN. Burns, *James Madison, Philosopher of the Constitution*, esp. pp. 15–16, 71–72.

[64] Jefferson to Thomas Randolph, May 30, 1790. Chinard, *Commonplace Book*, p. 32; *Writings*, VI, pp. 61–65.

[65] *Wealth of Nations*, First Modern Library (Cannan) Edition, p. 358.

improvers the most industrious, the most intelligent, and the most successful."[66]

Such kindred feelings and opinions as these, not to mention the basic philosophy of *laissez faire*, of which they formed a part, must have put Jefferson in a receptive mood for Smith's disproof of Physiocracy[67] as well as for his whole theory of the harmony of interests and the integration of all economic enterprise. But the spring from which he drank most deeply, and in which he saw his own image most clearly reflected, was Locke's *Second Treatise of Civil Government.*

Jefferson's dream of a rural republic, isolated from the commercialism and industrialism of Europe and composed entirely of self-governing farmers, had begun to fade before it was full-blown. As the intransigent John Taylor lamented to Monroe in 1810: "There were a number of people who soon thought, and said to one another, that Mr. Jefferson did many good things, but neglected some better things; and who now view his policy as very like a compromise with Mr. Hamilton's."[68] Although Taylor continued to prompt him with such sentiments as "the divine intelligence which selected an agricultural state as a paradise for its first favourites, has . . . prescribed the agricultural virtues as the means for the admission of their posterity into heaven,"[69] and to sandbag the dikes with his weighty arguments against it, both he and Jefferson saw that the rising tide of commerce and industry could not be held in check. The unpent genie of industrialism was moving about the world and had visited America. By 1791, Hamilton could say with confidence, in his *Report on Manufactures:* "The expediency of encouraging manufactures in the United States, which was not long since deemed very questionable, appears at this time to be pretty generally admitted."[70] So it came to be, even by Thomas Jefferson. But the principles Jefferson borrowed from Locke and paid back, as it were, with the accumulated interest of his name and fame have lived on, to inspire the framers of modern agricultural policy and color the thoughts of Americans when they turn their minds to rural life.

[66] *Ibid.*, p. 392. [67] Book II, Chap. 9.

[68] Taylor to Monroe, Oct. 26, 1810. Dauer and Manning, "John Taylor: Democrat or Aristocrat," p. 397.

[69] *Arator*, 6th ed. (1818), p. 189. This was the most widely read of all Taylor's works, running through seven editions from 1803 to 1840. E. T. Mudge, *The Social Philosophy of John Taylor*, p. 152.

[70] Hamilton, *Works* (Constitutional Edition), IV, p. 70.

GERMAN ADMINISTRATION UNDER THE NAZI RÉGIME

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When the third edition of Otto Mayer's famous treatise on German administrative law appeared in 1924, this dean of the science of German administration remarked, ironically and almost contemptuously, in his preface: "No important additions have been necessary since the editions of 1914 and 1917. . . . While constitutions wane, administrative structures remain."[1] This statement being made at a time when the structure of German government seemed to have been changed fundamentally by a world war and a revolution, many considered it a somewhat sour reaction of a conservative and a "specialist," who closed his eyes to the great changes which had taken place in Germany and sought solace in the apparent stability of the more technical administrative machine.

Today we see that the remark almost perfectly fitted a situation where, under what proved to be a rather fragile constitutional roof, essential bureaucratic forces and governmental structures remained the same as before and were able eventually to thwart the implementation of the new political tendencies. Upon further reflection, Mayer's somewhat casual statement seems to fit the more general relation between the constitutional-political form and the underlying administrative structure which has prevailed in Continental countries since the French Revolution. With regard to France, for instance, one might say, in this connection, too, that *plus ça changea, plus ça restait la même chose*, the first *ça*, here, referring to the form of the state and its varying constitutions, the second to the system of French administration, which has remained fairly constant since its inception under Napoleon. While it has possibly been the other way around in the United States, where the political constitution has changed less fundamentally than administrative structures, the only great European exception to Mayer's rule of "administrative materialism" has been Russia,

[1] "Gross Neues ist seit 1914 und 1917 nicht nachzutragen . . . . Verfassungsrecht vergeht, Verwaltungsrecht besteht." Otto Mayer, *Deutsches Verwaltungsrecht* (3rd ed., Leipzig, 1924). No translation can sufficiently render the sarcasm contained in the expression "Gross Neues."

where the Bolshevist revolution brought about a fundamental transformation of administration also.

At a time when another political régime has come to an inglorious end in Germany, rendering another "constitution" obsolete and thus making it a fitting object for scientific analysis, it behooves us not to let the great constitutional changes in Europe monopolize our attention, but to determine whether Mayer's *dictum* may not still be applicable. In other words, we should direct our attention toward the bureaucratic-administrative structures of the countries now in turmoil, because as the trend toward organization and integration of life and society in and by the state increases, these structures assume more *political* importance than they ever possessed before. In the case of Germany, this analysis becomes more necessary as de-nazification and regeneration commence in the spheres of local and regional administration. The Potsdam Declaration of the Big Three provides for the inauguration of democratic procedures on the level of local and regional government after the thorough de-nazification of the bureaucratic machinery.[2] It would be ironical indeed if the same group and system which allowed an intrinsically authoritarian society to survive the Empire and to outlive the Republic were now permitted to become the backbone of whatever future Germany shall arise. The danger of that group and system again becoming the focal point of revival is the greater now because there is a complete political and ideological void in contemporary Germany, where a defeated people, lacking in direction-giving rules and values, will be inclined to turn to those who always have been regarded as makers of rules and givers of orders by a population unused to initiative. On the other hand, German bureaucracy itself has never experienced great difficulty in adapting itself to new conditions and new rulers. Its ideology holds that the state is an entity essentially separate from constitutions, governments, and organs of administration, and has enabled it to serve with equal "loyalty" whatever régime has come to power by whatever means.[3] It is possible that the existence of this

[2] See points 6 and 9 of the Potsdam "Agreement Concerning the Political and Economic Principles to Govern the Treatment of Germany in the Initial Control Period."

[3] This type of bureaucrat is exemplified in Otto Meissner, who served the Kaiser, the Republic (under both Ebert and von Hindenburg), and finally Hitler in highest ministerial positions. He was found equally reliable by all his masters.

point of view might pave the way for an attempt to revive German government and administration on essentially the same authoritarian lines as before, thus defeating Allied policies.

This article does not purport to discuss either present difficulties or future problems. In order, however, that these matters may in future be dealt with appropriately, it is necessary that we know what became of German administration and bureaucracy under the Nazi system. It seems that certain essential features are already clearly established.

I

It is frequently maintained that under the totalitarian régime of the terroristic apparatus of the Nazi party, the "state" became only a part of the Party machinery. The bureaucracy was allegedly completely integrated and its governmental procedures amalgamated with those of the totalitarian party. An opposite view asserts that German bureaucracy, as well as administrative systems and procedures, remained essentially untouched by the Nazi régime. Both views constitute an over-simplification of a complicated reality.

The underlying purpose and tendency of the originators and leaders of the Nazi régime was to create a completely party-dominated and party-permeated state and society. Every group and institution in this system was to be totally merged in a new Nazi-patterned order, where neither divergent nor merely non-"coördinated" tendencies and forces were to be tolerated. But while here, as in other fields, totalitarianism aspired to a completely streamlined, and in this sense "rational," system, it did and could not choose the most logical way to achieve this end with regard to administration and bureaucracy; it could not wholly abolish the existing system and replace it with its own new personnel and structure. While the Bolshevist régime in Russia undertook a total renewal at the cost of long disintegration and confusion of the state machinery, the Nazis did not want to wait. Their major aim was to prepare for war, and they could not carry on without the help of the existing administrative machinery. National Socialism, therefore, had to use, modify, and adapt existing institutions to its specific purposes and policies, while profiting from their efficiency and technical skill.

The administrative apparatus and its staffs, on the other hand,

did not remain "essentially unchanged" when being put to use by a totalitarian party-régime. It is true that two factors were helpful in the marriage between Nazism and the traditional bureaucracy. The first was what may be called the "functional rationality," or rationality with respect to means,[4] which derived from the ideal and purpose of both party and bureaucracy, in so far as they were intent upon having a technically smooth and efficient machinery. The other factor was the fact that German officialdom had long been politically opportunistic and accustomed to submit to and obey any power presenting itself in the forms of outward legality. Indeed, since Bismarck's victory in his conflict with the Prussian Diet, this officialdom had sometimes even overlooked certain illegalities in the achievement of power, if only the régime continued to rule in accordance with the outward forms of legality. Nazism shrewdly utilized this inclination and avoided antagonizing the civil service by sudden or too frequent breaches with established forms and procedures. As a matter of fact, by creating its own terror machinery outside the "ordinary" administration, and by requiring the bureaucracy, in the earlier period, to put up merely with a certain amount of political coördination and with aryanization, Nazism used the same method which it so successfully applied to its initial foreign policies—that of putting its program into practice piecemeal and thus demoralizing the opposition, which, having failed to resist the first moves, proved unable to oppose the subsequent steps.

By giving in to the increasing demands of the Nazi régime, German bureaucracy became corrupted. In spite of the traditional opportunism, the majority of German officialdom had generally been imbued with a certain regard for the values of *Rechtsstaatlichkeit*, which meant the objective application of a non-arbitrary law to different groups and persons. The administrative official was now compelled to violate and deny these values, because Nazism meant regulation of quickly changing situations without regard for traditional standards and values. While certain more or less passive resistance was offered from time to time,[5] the bureaucracy on the

[4] In the sense of Karl Mannheim's distinction between the "functional" rationality of a system, *i.e.*, rationality with respect to means and organization, and "substantive" rationality of the end and underlying thought. An "irrational" system or régime may well make use of "rational" means to attain its ends. See Mannheim, *Man and Society in an Age of Reconstruction* (New York, 1940).

[5] Examples will be supplied below.

whole complied. Maintaining its outward identity, distinct from other groups and organizations, and not merged with the party machinery, it nevertheless became intrinsically a cog in the Nazi machine.

The picture which the system of German administration under Nazism came to offer, therefore, was one of an incomplete fulfilment of the original party ideal, in which there appeared side-by-side two tendencies: one toward the totalitarian ideal of a merger between party and state; the other toward the maintenance of an expert group of administrators distinct from inexpert ideologists and "fighters." It is the nature of this "dualism"[6] which will be illustrated in the following sections by means of examples from various problems and spheres of administration.

II

1. *The Relation Between the Nazi Party and the Administration.* The "dualism" referred to expressed itself first of all in the coexistence of the administrative machinery of the Nazi party and of the state. It was the aim of the party extremists eventually to have the various fields of state administration merged into the party structure, which for this purpose had developed a diversified organization with branches for almost all fields in which the state traditionally had been active. This aim, however, was not achieved, although, of course, the administration became more and more politically dominated and directed by Nazi principles and party leaders. But the two machineries as such remained separate, and, until the end, it was impossible to say which one was "superior" to the other in its rôle as bureaucratic machinery. It is true that high Nazi leaders early proclaimed the principle of "the party giving orders to the state." But whatever the tendencies in this direction, the development was stopped in 1934, when Hitler forced the SA under Roehm, at that time his mightiest party organization, to abstain from "taking over" the army, the mightiest part of the state machinery. It was on that occasion that Hitler declared officially that the revolution had come to an end. From then on, in spite of endless discussions of party "superiority" by Nazi theo-

[6] Ernst Fraenkel, in his *Dual State* (New York, 1941), has applied the concept of dualism between a "normative" and a "prerogative" state to the whole of the Nazi system.

rists,[7] dualism actually prevailed. It found its most significant practical expression in the device of "personal identity" of the highest chiefs of respective branches or units of state and party: while leading personalities of the régime took over direction of certain parts of state as well as corresponding administration, they utilized in each instance different machines and staffs for the two purposes. Hitler himself was chief of state and government, and therewith of all state bureaucracy, as well as party *Fuehrer* and supreme leader of all party organizations. Goebbels was head of the propaganda machine of the party and, in his capacity as Reich Propaganda Minister, chief of the state administration concerning propaganda and "cultural" activities. On the regional level, the Reich governors, heads of the member states, and the Prussian provincial presidents, heads of the administration of the Prussian provinces, were almost without exception Party *Gauleiter*, *i. e.*, leaders of the regional subdivisions of the party and as such heads of the regional party machine. But while in a position to direct the respective state units politically in the party sense, they used as state officials the traditional state authorities and their staffs, which remained in a position to make their influence felt in the rather imperceptible but obstinate way of permanent bureaucracies. Locally, as for instance in the government districts (*Regierungsbezirke*) of the major *Länder*, the counties, and the municipalities, there was even less of "personal identity" between administrative chiefs and party leaders; district presidents, for instance, were rarely party functionaries.

Attempts to strengthen the hold of the party, notably by conferring upon party men more and more administrative key positions, multiplied during the war. One device, already partly applied before the war in order to coördinate certain fields, was to place party men as special "commissars" in charge of some branch of the administration. The regular chiefs were subordinated to these "czars," who were appointed with special powers to coördinate and direct activities regardless of normal jurisdictions and routines.

[7] On these and court practice concerning the problem, see A. V. Boerner, "The Position of the NSDAP in the German Constitutional Order," in this REVIEW, Vol., 32 (1938), pp. 1059 ff.; also F. M. Marx, "Bureaucracy and Dictatorship," *Review of Politics*, Vol. 3 (1941), pp. 100 ff.

Thus Fritz Sauckel, as manpower commissar, handled all matters of labor supply irrespective of the normal jurisdiction of the Labor Ministry.[8] At the outbreak of the war, furthermore, the *Gauleiter* were made "Reich Defense Commissars," with authority to coordinate in their regions all civilian administrative affairs connected with war and defense;[9] in other words, they were in charge of practically all civil administration. They were, however, not supplied with either special machinery or staff for this purpose; nor were they allowed to use the party machinery, but had to rely on such regional state agencies as district or *Land* governments. Thus the old bureaucratic machine remained intact even under the stress of war and "total mobilization."[10] Only in the spheres of economic and production controls (including agriculture) was the old bureaucracy partly replaced, or better supplemented, by "self-governing" institutions, such as the industrialists' organizations for raw materials allocation or the technocratic engineers' *élite* of Speer's Armament Ministry.

A peculiar type of "dualism," which prevailed in the realm of the police, should be mentioned. The problem of deciding whether state or party was supreme here found its clearest expression in the fact that at the top Himmler, whose title as Reich Leader SS and Chief of the German Police already indicated the merger, headed the Main Security Office of the Reich (*Reichssicherheitshauptamt*), a supreme agency which was simultaneously central authority of the party's SS and the state police. Under it, however, there was still dualism between the SS and the police.[11] The police itself was divided into two parts in which party influence existed in a markedly different degree. Side by side with the old ordinary police was the newly organized "security police," whose main branch was the Gestapo. While the ordinary police continued to operate by traditional formal and legalized procedures, the Gestapo was exempt

[8] See decrees of March 21 and 27, 1942 (*RGBl.* I, pp. 179, 180).

[9] See decree of September 1, 1939 (*RGBl.* I, p. 1565).

[10] The formal equality between state and party found significant expression in the formal regulations which determined the respective ranks of officials and party functionaries. Thus, on all official occasions, Reich ministers ranked equally with party *Reichsleiter*, Reich governors with *Gauleiter*, etc.

[11] "Personal identity" between chiefs of police and SS was, however, achieved in the major regional subdivisions of police administration through the creation of Higher SS and Police Leaders for Army Corps areas.

from any and all legal limitations.[12] Also, although remaining part of the state organization, it became almost indistinguishable from a party organization because of its intimate connection with the SS, to which all its functionaries belonged and which permeated its activities down to the lowest level.[13] The régime succeeded, therefore, in merging the security agencies of the state almost completely with the security and terror instruments of the party, while the residuary elements of the police remained autonomous to the extent that other state authorities had maintained their very relative independence.

The relation between party and administrative machinery[14] was not one of merger and identity, but rather one of control, supervision, and influence. While party and administration, *qua* organizations, remained separate, the party dominated in the guise of

[12] This implied above all unrestricted liberty of action in the "political" field, whose limits were determined by the Gestapo agencies themselves, and absence of any judicial and other review of Gestapo measures. It does not mean that the Gestapo did not, as any other administration, proceed according to certain bureaucratic patterns. On the contrary, formal "legalism," deeply ingrained in German bureaucratic ways, was applied by the Gestapo in a manner which oftentimes led to ridiculous discrepancies between anxious observance of meaningless forms and actual brutality and terrorism. Thus the cruelties inflicted upon concentration camp inmates were based upon detailed "penal and disciplinary codes" issued by the camp commanders, which, as to contents, left, of course, every latitude to brutality, and there were detailed forms to be filled out concerning each instance of "punishment."

[13] Even formally, the distinction here was almost wiped out. Thus, while concentration camps were officially state institutions, the outfits guarding them were SS formations; while detention orders were issued by the Janus-faced Reich Security Office on application of state agencies such as the regional Gestapo offices, camp administration was under the jurisdiction of the Economic and Administrative Main Office of the SS, etc.

[14] The actual relation between the influence of representatives of state and party machinery, respectively, can perhaps best be gauged from the composition of the Ministerial Defense Council, the body established at the outbreak of the war as supreme legislative and executive agency below Hitler himself. Its chairman, Goering, who, while a prominent party figure, was less connected with specific interests of the party bureaucracy than with certain industrial interests and the armed forces, was, in a way, "neutral." Two members, Keitel as chief of the High Command of the Armed Forces, and Lammers, chief of the Reich Chancellery, more or less represented "state" interests in the broader sense, *i.e.*, army and bureaucracy. Funk, Minister of Economics and an old party member, was somewhat in the middle; while the deputy leader of the party (first Hess, then Bormann) and Himmler as SS and police chief represented the interests of the party machinery and its organizations.

general leadership. Party leaders, from their vantage points as chiefs of important administrations, controlled the various branches of administration and supervised their activities. They were able to do so because the introduction of the monocratic leadership principle and the elimination of self-government transformed the entire German administration into the all-pervading relationship of command and subordination.

2. *The Nazification of the Civil Service.* While the civil service, in spite of Nazi attempts to merge it more and more in the party machine, retained its separate existence as a close group protected at least from direct interference on the part of the lower and regional party machinery, this fact did not of itself imply that the body of officialdom remained a neutral non-Nazi bureaucracy. But it did not become the hundred-per-cent nazified body which the party stalwarts wanted to make it. While the tendency on the part of the régime was certainly directed toward complete nazification, there was only a partial achievement of this goal. The result was rather that to the very end of the régime there existed within the bureaucracy the dualism characteristic of the entire administration under Nazism, the simultaneous existence of both Nazis and "unpolitical" career men and experts, who were sometimes even secretly anti-Nazi.

The initial aim of the régime was to make the civil servant the "political soldier" of the Third Reich. Unlike the traditional German civil servant, the "ideal type" of this "political" official would not confine himself to doing his duty and serving the state whatever the system of government,[15] but would positively and enthusiastically promote the specific ideologies and policies of the new régime. But after the initial purge, which eliminated the outright political appointees of Weimar and the "non-aryans,"[16] it was realized that expert officials could not so easily be dispensed with without endangering the functioning of a system thrown into high gear in

[15] This was, at least in theory, the attitude of pre-Nazi German officialdom. Actually, as is well known, the authoritarian and monarchistic tradition of the civil service under the Weimar régime frequently induced it to interpret "service to the state" as demanding sabotage of, rather than compliance with, many demands of the democratic government.

[16] The relatively low number of officials thus affected can perhaps best be illustrated by the Prussian protective police. In this supposedly most republicanized branch of interior administration, the Nazis found it necessary to dismiss only 1.7 per cent of the enlisted personnel and 7.3 per cent of the commissioned officers.

preparation for war. The "revolutionaries," inclined as always to underestimate the rôle of *expertise* (just as much as conservatives are inclined to overestimate it), had to give in. From that time on, in the main, the aim was to turn officials into Nazis instead of turning Nazis into officials. The hope was that the new, young appointees, politically trained in Nazi ideology, would gradually imbue the civil service with genuine Nazi spirit, while close supervision and indoctrination would keep the older officials in line.

The Nazi Civil Service Code of 1937 stressed the duties of loyalty to the Nazi state incumbent upon each civil servant and created a party monopoly over new appointments by giving the deputy party leader (later called chief of the party chancellery) and the *Gauleiter* a right to pass on the reliability of candidates. But while tremendous pressure was exercized upon the administrative personnel to join the party or its affiliated organizations and to give up membership in or adherence to any group not entirely coördinated with the régime (such as religious organizations or even the churches proper), it was not until 1939 that party membership was made obligatory for candidates for public office.[17]

Thus a significant split developed between "genuine" Nazi and more neutral officials, although it was not entirely a split between old and new appointees. It went through the different classes of civil servants—lower, middle, and higher—each of which contained representatives of both groups. It went through the various branches of administration; indeed, the division into Nazis and non-Nazis might be found in practically every office. The split continued in the ministerial bureaucracy; some of the more "technical" ministries, such as finance, transport, and communications, were even headed by "expert" ministers until the end, while political coördination was insured by trusted "political" under-secretaries. In most agencies and offices, the chief, deputy-chief, or personnel chief was the foremost representative of the party interest; while those officials of the respective offices who were functionaries of one of the political organizations of civil servants (German Civil Service Association, NS Teachers Association, etc.) kept watch over the "neutrals." Outright Nazis could be found also among those who had been promoted with unusual speed and those who, in the re-

[17] See decree concerning the training and career of German civil servants February 28, 1939 (*RGBl.* I, p. 371), Art. 2.

spective agencies, were in charge of the politically important desks. Neutrals or secret anti-Nazis, on the other hand, might be found among holders of more "unpolitical" positions, as well as among those who had been barred from promotion. Among the older officials, in particular, a number maintained their attachment to one or the other of the former political parties or ideologies. No sabotage and little passive resistance, however, were forthcoming from the "anti-Nazis."[18] Yet the split between the Nazi and the non-Nazi officials continued, and was so pronounced that those with inside knowledge could, in the case of each office, point out rather accurately who, among the staff, belonged to the one or the other group.

Toward the end of the régime, developments went in two opposite directions. On the one hand, manpower shortages and the urgent need for experts in an expanding administration (war controls, administration of occupied areas) forced the régime to proceed cautiously in purging, and in certain cases actually to reinstate older retired officials in spite of their "unreliability." On the other hand, growing dissatisfaction with the régime, noticeable also among members of the bureaucracy, rendered it more and more necessary to appoint to key positions "pure" party members without expert knowledge or capacity commensurate with those positions. In 1942 and 1943, there were wholesale dismissals and new appointments in the administration of justice and the regional railway and postal administrations—fields which until then had to a certain extent remained free from open political interference. The tension between party leadership and a bureaucracy accused of being too unpolitical, too lenient, or too passive, culminated in a Reichstag meeting of April 26, 1942, at which Hitler violently denounced such tendencies and secured a confirmation of his right to remove any recalcitrant member of the civil service irrespective of existing legal regulations and vested rights of the officials.[19]

3. *Reform of the Structure of Administration.* In contrast with the

[18] In this situation there was a significant difference between conditions during the Nazi and Weimar régimes. While under the Republic there was likewise a split between the traditional, monarchistic-reactionary bureaucrats and the political appointees of the régime, it was the former group that kept the initiative, while the "political" officials were at best tolerated and were too timid, or actually too unpolitical, to try to force their views and attitudes upon the other group.

[19] See Hitler's speech before the Reichstag (*Reichstag-Verhandlungen*, 1942, pp. 109 ff.) and Reichstag Resolution of April 26, 1942 (*RGBl.* I, p. 247).

more "political" problems so far discussed, that of the attempted "rationalization" of the structure of administration is of a more technical character. Rationality, whether of government or of other social institutions and procedures, in the sense of technical perfection and streamlining, is in itself, of course, a goal sought by various régimes. But while liberal democracies can afford, or may even need, a certain amount of measured "anarchy," totalitarian régimes need rationality in order to enable their rulers to exercise that all-inclusive and all-pervasive control over the ruled without which their rule could not be "total." Such rationalization of government demands first of all centralization, because autonomy or self-governing powers of member-units, municipalities, etc., entail the danger of their becoming focal points of resistance or, at least, of uncontrolled or independent action. It was, therefore, in the logic of things that the Nazi régime in its first years established Germany as a centralized, unitary state, in which the former member-states were reduced to mere territorial-administrative subdivisions and, together with lower regional units, deprived of their autonomous status. This development, however, did not of itself solve the problem of a rational structure of administration. As a matter of fact, it made that problem more complex. When the Reich assumed control of functions hitherto exercised by a great number of more or less autonomous units, the administrative machinery was faced with a tremendous number of intricate fields and complicated functions. With the expanding functions of the totalitarian régime and its assumption of rearmament and war tasks, the problem, of course, became even greater.

This situation gave rise to two contradictory tendencies. The first, in harmony with the political desires of the Nazi régime to have a streamlined and easily controllable administrative machine, was directed toward "unified control" (*Einheitsverwaltung*). Under this system, in accordance with the leadership principle, each unit of regional and local government, such as county, province, or *Land*, would have become *the* unit for every field and function of government and administration. Each unit would thus be controlled by one man from one vantage point. The other tendency, supported by the traditional pattern of organization and by the special aspirations and mutual jealousies of the competing branches of administration, was toward the maintenance of "special administrations," with their own chiefs, staffs, and jurisdictions. Frequently these

special administrations had areas of their own differing from and overlapping those of general administration; correspondingly, this tendency was also toward establishing new "special administrations" for any new function conferred upon the administration.

The "dualism" resulting from the conflict between these tendencies was characteristic of the system of "half-achievement" peculiar to Nazi government. The tendency toward unitary control found partial realization through the concentration of political and administrative powers in the Reich governors and Prussian provincial presidents, who were made political "commissars" of the Reich government for their regions with power to receive information and, in certain circumstances, to give directives to all administrative agencies in their area of jurisdiction. An even more rationalized structure was established outside the old Reich territory in regions incorporated into the Reich (Austria, Sudetenland, annexed Polish territories).[20] Here, the *Reichsgau* became a highly streamlined governmental unit, in which the Reich governor (who was simultaneously party *Gauleiter*) in principle headed all branches of administration, including "special administrations." These branches ceased to be under the immediate control of the respective ministries and passed under the direction of the regional chief of government. Similarly, on the local level, *Landrat* and *Oberbürgermeister* in the *Reichsgaue* were established as chiefs of an *Einheitsverwaltung*.[21]

Despite all these attempts, however, the régime was unable to achieve effective coördination of the general administration with the various special branches, whose number and functions steadily increased with the addition of new "Nazi," defense, and finally war, agencies[22] to already existing special administrations.[23] Besides innate organizational difficulties, both the natural tendency of a bureaucracy to defend its special sphere of authority and the desire

[20] See A. V. Boerner, "Toward Reichsreform—The Reichsgaue," in this REVIEW, Vol. 33 (1939), pp. 853 ff.

[21] The strongest integration of *Reichsgaue* was to be found in the annexed Polish territories, which, like the rump Government-General of Poland itself, were considered as being inhabited by what official Nazi doctrine classified as "colonial" populations. See Werner Best, "Grundfragen einer deutschen Grossraumverwaltung," in *Festgabe für Heinrich Himmler* (Darmstadt, 1941), pp. 33 ff.

[22] *E.g.*, Propaganda Offices, agencies of the Four-Year Plan, and agencies of the Armaments Ministry.

[23] *E.g.*, labor, finance, railways, and post.

of regional and local party bosses to maintain power positions gained within the administration were obstacles to the realization of unitary control. The result was the rise of more and more "states within the state" and an increasingly unwieldy machine with overlapping or ill-defined functions and continued jurisdictional friction. This fact was finally admitted by the Nazis themselves. According to Stuckart, the leading Nazi expert on administration who became under-secretary in the strategic Reich Ministry of the Interior, there were in 1941 no fewer than forty different administrative branches on the regional level of government and about forty-five on the lower levels, each with its own set of agencies and offices.[24] In order to appreciate the confusing picture offered by the Nazi administrative system, there must also be added the innumerable agencies of the party and its affiliated organizations, as well as the organizations and institutions of economic and similar "self-administration" (or "estate" administration).

4. *Territorial Reform of the Reich Structure.* In respect to the territorial structure of the Reich, the aim of the Nazi régime was to "rationalize" the irrational pattern of the component states, which still ranged from the "big power," Prussia, embracing almost two-thirds of the Reich's area and population, to city states like Hamburg and pygmy states like the two Lippes. These *Länder*, which under the Nazi régime soon lost their political autonomy, were supposed to be replaced by *Reichsgaue*, which, in structure and territorial configuration, were to be more rationally based upon socio-economic as well as "tribal" (*Stamm*) distinctions among the German regions, and were to coincide with the major regional subdivisions of the party as well as other institutional units. It was also proposed to make these units more equal in size and to reduce their number.

At the end of the Nazi régime, however, the *Länder* still existed, and instead of seventeen there were twenty-nine major regional units, not counting annexed territories. For, apart from minor reforms[25] such as the merger of two states (Lübeck and Mecklenburg-

[24] Wilhelm Stuckart, "Zentralgewalt, Dezentralisation und Verwaltungseinheit," in *Festgabe für Heinrich Himmler*, pp. 1 ff., in particular p. 20.

[25] On the earlier reforms, see A. Lepawsky, "The Nazis Reform the Reich," in this REVIEW, Vol. 30 (1936), pp. 324 ff.; R. H. Wells, "The Liquidation of the German Länder," *ibid.*, pp. 359 ff.; G. Krebs, "A Step toward Reichsreform in Germany," *ibid.*, Vol. 32 (1938), pp. 536 ff.

Strelitz) with neighboring units and the territorial consolidation of some others (Hamburg, Bremen, and Braunschweig), as well as the formation of the Westmark unit out of the Saar and the Bavarian Palatinate, the one major achievement of the régime in this respect was the virtual destruction of Prussia as a *Land* and its replacement by its various provinces, which thus became regional units with the same structure as that possessed by the *Länder*, i.e., immediate administrative subdivisions of the Reich. This result was achieved by merging the Prussian ministries and other central agencies with those of the Reich; the one surviving Prussian ministry, that of finance, was absorbed by the Reich Finance Ministry in 1944.[25a] There remained only the empty title of Prussian Minister President, which Goering, indefatigable collector of ranks and titles, was unwilling to give up. And instead of consolidating the Prussian provinces, the régime even created three more, through divisions of Silesia, the province of Saxony, and the province of Hessen-Nassau.

The result, which may surprise those who are inclined to see Nazism merely as a particularly ardent expression of "Prussianism," was to destroy the political-administrative existence of this most conspicuous of the old Germanic states. Apart from this achievement, the crazy pattern of territorial organization, ranging from Bavaria (now largest) down to Schaumburg-Lippe, was maintained. Rationalizing tendencies found their obstacle in the traditional federalism of large parts of the population, and probably also in the vested interests of regional party bosses who, once installed in some regional office, were willing to collaborate with federalist forces, including the old state bureaucracy, in order to maintain their separate existence. Thus "particularist" tendencies were in a position to cluster around the still existing administrative agencies of the states, which, in spite of their now being Reich authorities, continued to function within the framework and the boundaries of the states. While the party was endowed with its "rational" territorial *Gau* structure, the state administration succeeded in maintaining its traditional area pattern against all attempts to replace it with a new and more streamlined structure.

5. *Municipalities as "Nazi Communities."* In the field of municipal government, the Nazis attempted to set up municipalities as "ideal communities" which would be imbued with the new spirit

[25a] This was done as an "economy" measure following Goebbel's appointment as "Commissar for Total Mobilization" by decree of July 25, 1944 (*RGBl.* I, p. 161).

of Nazism. Through their tradition of self-government, however, these municipalities would continue to administer certain functions themselves, thereby releasing state administration for its own numerous functions. Of course, "self-government" in the form of democratic participation of the population in local affairs was immediately abolished. Also, "purification" of administration was particularly thorough in city government, where a percentage of officials higher than that in state administration fell victim to the initial purge; party members, of course, shared considerably in the spoils. But, as in state administration, this development was stopped. The Nazi Municipal Code of 1935, which rationalized municipal government by replacing the numerous different systems of local government with a uniform structure valid for every community in the Reich, tried to establish a compromise solution between the tendency toward direct party interference and that toward municipal autonomy in the sense of absence of direct interference on the part of the party machine. Party influence was, so to speak, legalized by the fact that the party's district leaders on the basis of the Municipal Code, assumed a quasi-official function through participating in appointments, dismissals, and other important decisions pertaining to city affairs.[26] This development meant, on the one hand, strong party influence in such matters as the selection and appointment of mayors, but it also meant exclusion of the device of "personal identity." Once mayors had passed a kind of probationary period of one year's service, they, and not the party district leaders, constituted the "leaders" of their community. Similarly, in the administration of the rural counties, a decree of 1939[27] expressly forbade mutual interference between *Landrat* and district leader, whose offices were to be separate—one being in charge of "administration of things," the other of administration, or manipulation, of people.

The attempt to maintain this system was unsuccessful. Any autonomy vis-à-vis the state which had remained in the municipalities had to be abolished at the outbreak of the war,[28] when state "supervision" of municipal affairs was replaced by the power of "direction." This meant not only utmost "rationalization" in the

[26] For details, see R. H. Wells, "Municipal Government in National Socialist Germany," in this REVIEW, Vol. 29 (1935), pp. 652 ff.

[27] Decree concerning administration of rural counties, December 28, 1939 (*RGBl.*, 1940, I, p. 45)

[28] Decree of August 28, 1939 (*RGBl.* I, p. 1535), Art. 5.

sense of central controls, but also the failure of the attempt to have municipalities administer their affairs themselves. It meant, too, that any remnant of popular interest in the affairs of the municipality vanished. The advisory municipal councils, established by the Municipal Code in order to maintain a facade of popular participation in municipal affairs, were allowed to become more or less inactive. A directive of October, 1943, by Himmler as Minister of Interior brought last-minute efforts to reactivate the town councils, but this effort also failed. Popular indifference turned into dissatisfaction when local government proved unable to coördinate the innumerable administrative tasks and bureaucratic agencies with which the citizen came in touch on the local level.

On the other hand, the régime was unable to maintain the system of "separation of powers" which had been envisaged for the rural counties. This conclusion is substantiated by a Hitler directive calling attention to the principle of separation between state and party offices as late as spring, 1945.[29] Apparently even at that time some party functionaries were still *Landräte* or similar state officials. Toward the end of the war, efforts were made to coördinate the most important functions of government in rural regions by having village or town mayors, local party leaders, and the "peasant leaders" of the Food Estate coöperate as a "local triangle" (*Ortsdrieck*). This plan was also apparently too late to bring about a change with respect to the three main shortcomings which the Nazi system of local administration had produced: popular indifference; lack of coördination between the various units and agencies on that level, particularly state or municipal administration and party; and failure of local government to administer local affairs responsibly and without the necessity of state interference.

6. *Replacement of Administrative Law by Totalitarian Discretion.* It is in the nature of totalitarianism that it cannot recognize a law which puts limits to the acts of government and administration. Even less can it afford to accept a system which, like that of administrative jurisdiction developed in pre-Nazi Germany, sets up courts as arbiters between state and citizen, thus putting authorities on the same level with "subjects" in subordination to the law. The tendency under Nazism was to do away with as much of administrative law and administrative tribunals as possible. The régime was nevertheless not entirely successful in this endeavor, al-

[29] Published in the German press, Apr. 8, 1945.

though what remained of administrative justice was more impressive on paper than in actual practice.

In the all-important field of police, for instance, administrative jurisdiction after 1933 lapsed through the simple fact that the rules which until then had provided for protection of individuals and groups against police interference were eliminated; police discretion was substituted for legal guarantees. Thus, when civil rights such as free speech or assembly were abolished, there was, of course, no longer any remedy against police acts interfering with such interests. Most of the remaining police cases were withdrawn from administrative jurisdiction by declaring them inherently "political," and therefore not reviewable by any courts; according to law[30] and practice, all acts of the Gestapo were "acts of political authority," exempt from appeals and redress. In other cases, the sphere of jurisdiction of administrative courts was narrowed by replacing procedures of administrative justice with mere "complaint" to the superior administrative authority. Thus, controversies between municipalities and the supervising state authorities, which had constituted a major type of disputes open to administrative justice, were removed from the jurisdiction of administrative tribunals.[31]

While the protection of individuals, groups, and corporations against executive power was progressively whittled down, particularly in the more "political" sphere, certain legal procedures were upheld in the non-political sphere. As a matter of fact, Nazis could even boast of having provided Germany with that crowning piece in the system of administrative justice which pre-Nazi Germany had failed to create: a Reich Supreme Administrative Tribunal, to take the place of the various highest administrative courts of the member states.[32] But here, as so often in Nazi institutions, reality and appearance differed, and the impressive façade of a unified system of administrative courts hid the actual non-existence of administrative law and jurisdiction. At the outbreak of the war, what had remained of the traditional functions of administrative courts was practically abolished.[33] The lower administrative courts were done away with, and lower administrative officials were al-

[30] Prussian law of February 10, 1936 (*Preussische Gesetzsammlung*, 1936, p. 21), Art. 7.

[31] Municipal Code of January 30, 1935 (*RGBl.* I, p. 49), Art. 113.

[32] See decree concerning the establishment of a Supreme Administrative Tribunal of the Reich of April 3, 1941 (*RGBl.* I, p. 201).

[33] See the two decrees concerning simplification of administration, August 28, 1939 (*RGBl.* I, p. 1535), Art. 4, and November 6, 1939 (*RGBl.* I, p. 2168), Art. 1.

lowed to decide in their place. Against the decision of such, complaint was to be lodged with the next higher administrative authority, which only in exceptional cases (*e.g.*, where a decision involved major legal problems) could at its discretion permit the case to be brought before an administrative tribunal on the higher level. It was thus the deciding agency itself which had to agree to submit its decision to further review. Since the decrees quoted above strongly urged the authorities to avoid unnecessary legal proceedings, it is not surprising that the practice of administrative jurisdiction, including that of the Supreme Administrative Tribunal, diminished in quantity as well as importance.

7. *The Dualism Between Political and Civil Justice.* In the sphere of administration of justice, both the law applied and the practice of the courts under Nazism soon degenerated into expressing and executing the policies of the régime.[34] Still, a rather significant difference remained between what may be called the "civil" or unpolitical and the more political part of the courts' jurisdiction. Besides "political crimes" in the widest sense, the latter comprised such typically Nazi fields as eugenic laws and racial legislation. While in the sphere of "civil" jurisdiction, the courts retained a certain degree of autonomy, they became completely subservient to the dictates of the régime in the "political" sphere.

As a matter of fact, German courts, in this respect, could not look back to a very honorable tradition. The historian of the Weimar Republic will no doubt discover among the more significant signs of decay the shameful conduct of German criminal courts, which in political cases openly measured Right and Left with different yardsticks. It is true that in 1933 the Supreme Court, in the famous Reichstag fire trial, tried to avoid a too open political handling of the case. But after political cases were taken from its jurisdiction and transferred to new types of courts, such as the so-called People's Court (*Volksgerichtshof*) and the Special Courts (*Sondergerichte*), compliance seemed assured. "Neutral" and "unpolitical" judges, as far as they were not retired, were put in charge of "unpolitical" parts of judicial activities, while agencies like the Special Courts, to which the bulk of criminal cases were transferred, were staffed with reliable persons, usually a proven Nazi as chairman with associates in the person of younger judges who were eager to show their zeal in order to be promoted.

[34] For details, see Otto Kirchheimer, "The Legal Order of National Socialism," *Studies in Philosophy and Social Science*, Vol. 8 (1940), pp. 444 ff.

After the outbreak of the war, nevertheless, a kind of "crisis of the judiciary" developed. Apparently, even part of the Nazified judges and prosecutors failed to keep pace with the régime's demands for increased terrorism and brutality. Professional jealousy, too, may have been aroused by the tendency toward whittling down the jurisdiction of the courts in favor of even more "political" agencies, such as the Gestapo, which could deal with a case without even needing to bring it to court for trial.[35] High party figures, and finally Hitler himself,[36] accused the judiciary of "formalism" and threatened to dismiss recalcitrant officials. With the appointment of Georg Thierack as Minister of Justice in 1942, a new era of utmost "coördination" of the administration of justice began. Thierack was given special powers, unbound by legal precepts, "to build up a National Socialist administration of justice."[37] Wholesale replacements of Appeal Court presidents and prosecutors-general followed. Prosecutors, instead of preparing indictments independently, became more and more glorified letter-boxes for the criminal police—in political cases, the Gestapo—which actually took over the preparing of indictments. "Circular letters" (*Richterbriefe*), containing the minister's critical comments on court decisions and intended "to lay down the general line for the judge to follow,"[38] were periodically sent out to judges and prosecutors. Presiding judges of special courts within an appeal court district would meet periodically under the chairmanship of the appeal court president, frequently in the presence of a representative of the ministry, to discuss the practice of their courts. Finally, many courts developed what probably constituted the acme of subservience to the wishes of the political leadership—the procedure of *Vorschau* and *Nachschau*. Each week the presiding judge of a Special Court submitted a list of cases to come up to the Appeal Court president, with short descriptions of the cases. Shortly before the actual trial, the president informed the presiding judge by telephone as to what sentence was expected, usually after consultation with the ministry and/or the Gestapo in the more important cases.

[35] In the case of Jews, it was officially decreed that cases involving them no longer belonged to the courts, but were to be handled by the police. Decree of July 1, 1943 (*RGBl.* I, p. 372), Art. 1. This was the "legal" basis of their extermination by the Gestapo and SS.

[36] In his speech of April, 1942. See above, p. 692.

[37] Decree by Hitler of August 20, 1942 (*RGBl.* I, p. 535).

[38] Thierack's own statement in an address to appeal court presidents and prosecutors-general, September 29, 1942 (published in *Deutsche Justiz*, Oct. 26, 1942).

And after the trial, any deviation from the expected sentence had to be specifically and elaborately justified by the court. The *Nachschau* contained a summary of the judgments rendered by the court during a preceding week. Such was the fate of an allegedly still "independent" judiciary under the Nazi régime.

What was the function of administration and bureaucracy in the Nazi system? Any future defenders of Nazi philosophy and policies, in looking for an alibi, can be expected to indict the bureaucracy, together with other groups such as certain army circles, as "saboteurs" of the régime. The facts as outlined above hardly uphold such an indictment, in spite of the occasional resistance offered and despite red tape and similar evils of bureaucracy. If it is true, moreover, that Nazi policies, unscrupulous and ever-shifting according to the "demands of the hour," were sometimes hampered by "legalistic" or "formalistic" attitudes on the part of a bureaucracy not coördinated one hundred per cent to such "activism," as a whole the usefulness of the administration in technically enabling the régime to proceed toward its aims vastly compensated for such drawbacks.

There can be no doubt that without this collaboration the Nazi party, thrown upon its own resources, would not have been able to implement its policies with the speed and to the extent it actually did. The opposite indictment of the bureaucracy, of having been an accessory in crime to Nazism, would be better warranted. For even those portions of the administration which were not actively involved in the commission of the more notorious Nazi crimes, and those officials who tried to remain "neutral," with insignificant exceptions did nothing to oppose the régime. Theirs is not so much a legal responsibility for commission as a moral, almost metaphysical, responsibility for omission.[39] For, above all ties which bind a man to his more "egocentred" duties toward narrower groups such as family or country, there stands an obligation which bids one to interfere when certain basic "rights of man" are being outraged. In this sense, German administration must bear collective responsibility for the deeds of Nazism, together with large parts of the German people and with all those who failed to stand up against fascism when there was a chance.

[39] On the occasion of the reopening of Heidelberg University in September 1945, the philosopher Karl Jaspers succinctly and poignantly put it this way: *Dass wir noch leben ist unsre Schuld* ("Our guilt is proved by the fact that we are still alive").

STATE CONSTITUTIONAL LAW IN 1945–46

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INTRODUCTION

The end of the momentous year symbolized by the physical scientists' entrance into national politics and political scientists' introduction to nuclear physics finds state appellate courts focusing on problems of business and reconversion; professionally critical, if not apprehensive, of the course taken by their superior in Washington; dubious of the behavior of organized labor, yet divided upon both the desirability of judicial discipline and the proper means of administering it; maintaining their separate, often irreconcilable, views on regulation of business and agriculture; above all, enjoying, like their superiors and predecessors, the historic, self-imposed duty of fitting constitutional garments to institutional girth.

How to constrict the swollen national waistline without risking grave internal pressures taxes ingenuity to the utmost. On the whole, a prudent realism still is evident in dealing with problems of price control. The restlessness and doubts noted last year, however, have persisted and find freer expression.[1] Paradoxically, state enforcement of federal penalties is generally sustained, despite ancient but dissolving dogmas to the contrary; whereas coöperative state or municipal action designed to reinforce and supplement the Emergency Price Control Act has suffered serious reverses.

Especially in the South, state courts remain outspokenly critical of federal decisions. While tensions on the race issue have abated, and Negro participation in the Democratic primary has been gracefully upheld in Florida,[2] both the Southeastern Underwriters and Bridges decisions have aroused widespread uneasiness[3]—even vigorous counter-attack.[4]

[1] Within six weeks after V-E Day, price control became a nightmare to the high court of Massachusetts. Congress, by its "ingenious legislative device" which left state courts only a "truncated, piecemeal . . . jurisdiction," had "put in default" the "great mass of persons," "foreclosed their right to object," compelled them to "obey or pay the penalty no matter how outrageously the regulation might violate their constitutional rights." Shaffer v. Leimberg, 62 N.E. (2d) 193 (June, 1945). See *infra*, note 6.

[2] Davis v. State, 23 So. (2d) 85 (July, 1945, reh. den. Sept., 1945). "We think this question is put at rest by . . . Smith v. Allwright . . . 321 U.S. 649."

[3] For the state courts' reaction to the Southeastern Underwriters decision, 322 U.S. 533 (1944), overruling Paul v. Virginia, 75 U.S. 168 (1869), and holding the insurance industry to be regulable as interstate commerce, see Prudential Insurance Co. v. Murphy, 35 S.E. (2d) 586 (S.C. Supreme Court, Sept., 1945); *In re* Insurance

Labor, however, remains the most crucial and active, as well as most fertile, field of constitutional decision. Mass strikes and picketing, secondary boycotts and jurisdictional warfare, are gradually exhausting judicial patience. But national and state legislation designed to *promote* collective bargaining and *equalize* the contestants in industrial conflict, together with the obvious reluctance of the Supreme Court to sanction, or even to rule upon, stricter labor controls, has left state courts handicapped by their very freedom. Trends are divergent and transitional, with some courts tending to mark time and show extraordinary self-restraint, especially in dealing with picketing in jurisdictional conflicts and with unlawful demands by unions under the NLRA, while others seize the initiative and move boldly, even in the face of such formidable legislative obstacles as anti-injunction acts.

Collectively, the year's labor cases thus reveal the weakness and insecurity of organized labor's constitutional position; they dramatize the extent to which even the basic and lately-won "constitutional right to picket" has rested on public and judicial good will—how easily and quickly, therefore, the balance may shift. Underscoring this point is the courts' manifest determination, made even clearer this year than last by a six-to-two decision in the key state of Michigan, to protect the "businessman worker" and the "self-employed operator"—to confine labor's use of economic pressure, in short, to matters of organization and collective bargaining.

Finally, signs of reaction such as seem inevitably to follow war are visible, if not yet widespread. Most significant, perhaps, is a disposition to assume, now that firing has ceased, with American soil untouched, that the home front, and especially the bench and bar, were among the major sufferers of the drastic powers of war.[5]

I. WAR AND RECONVERSION

Federalism—Price Control. With one major exception, price control cases of the year have been marked by a progression of earlier trends and issues. In dealing with consumers' actions brought under Section 205 of the Emergency Price Control Act of 1942 to recover money penalties for rent and price overcharges, the disposition of state courts still is overwhelmingly in favor of enforcing the federally-created right of action.[6]

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cases, 161 P. (2d) 726 (Kan. Supreme Court, Sept., 1945); State v. Prudential Ins. Co., 64 N.E. (2d) 150 (Ind. Supreme Court, Dec., 1945).

[4] See *infra*, notes 33 and 34, for cases attempting to undermine the Bridges decision.

[5] See note 1, *supra*.

[6] High courts in ten states have passed on these questions. Eight have held in favor of state court jurisdiction. In Massachusetts [Shaffer v. Leimberg, 62 N.E.

Reasons given, however, are highly diverse, or even omitted entirely. The century-old rule of the Antelope case[7] that the judiciary of one sovereignty will not execute the penal statutes of another has been dis-

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(2d) 193 (June, 1945)] and Virginia [Shaubach v. Anderson, 36 S.E. (2d) 539 (Jan., 1946)], following precedents under the Fair Labor Standards and other federal acts, consumers' actions were thought to be "of a civil nature, remedial of a private wrong and therefore not penal," "even though the damages consist of a multiple of the actual loss or . . . are assessed without regard to the actual loss." These courts thus circumvented the rule of the Antelope and took jurisdiction. Judges in Minnesota [Desper v. Warner Holding Co., 19 N.W. (2d) 62 (May, 1945)] and Maryland [Lambros v. Brown, 41 A. (2d) 78 (Jan., 1945)] while stating or implying a belief that the consumers' suits were remedial, concluded that state courts should enforce "civil liabilities created by acts of Congress, whether . . . penal or . . . remedial." The grounds for their conclusion—whether constitutional compulsion, the complementary nature of the federal-state relationship, or inter-sovereign reciprocity—remained undisclosed. The supreme court of Oregon [State *ex rel.* Bowles v. Olson, Judge, 151 P. (2d) 723 (Sept., 1944)] reached the same conclusion, with a like absence of reason, but without committing itself as to the penal or remedial character of the action. Connecticut's highest court [Lapinsky v. Capocino, 38 A. (2d) 592 (June, 1944)] felt itself bound by the Second Employers' Liability Cases. It argued first, that the consumer was "seeking a recovery which will inure to his benefit alone," and therefore that there were not present the practical difficulties involved in the enforcement of a "strictly penal provision"; second, that, in any event, "the state court is not lending itself to the enforcement of the law of another sovereignty, because the law it applies, though of federal origin, is just as much the law of this state as a statute enacted by our own legislature." For a discussion of the California and Illinois cases, see this REVIEW, Vol. 38 (Aug., 1944), pp. 679–681.

The New Jersey court of errors and appeals took a different tack, and one which raised, but which left unanswered, troublesome issues under the supremacy clause. The fact that there is "no relationship between the amount permitted to be recovered . . . and the sum in which the plaintiffs were injured," together with the further fact that the Administrator may sue if the consumer does not, was held to make the "damages" a penalty. Therefore a suit for their recovery was not cognizable in the state district court which under the state statutes had jurisdiction of "every action of a civil nature at law, or to recover any penalty imposed or authorized by any law *of this state*, where the debt, balance, penalty, damage or other matter in dispute does not exceed, exclusive of costs, the sum or value of five-hundred dollars." Thus while a consumer's action was held to be penal and enforcement was refused, the court rested its decision on the limited jurisdiction conferred on the lower court by the New Jersey statute rather than on the rule of the Antelope. It is significant, however, that a penalty imposed by a constitutional law of Congress was held not to be "a penalty imposed . . . by any law *of this state*" within the meaning of the New Jersey statute. Whether this discrimination against federal rights of action violated Article VI of the federal constitution was not discussed in the opinion. [Zuest v. Ingra, Same v. Farina, 45 A. (2d) 810 (Jan., 1946)]. Many of these were purchaser-plaintiff, administrator-intervenor cases, but the administrator-intervenor feature was entirely ignored.

[7] 23 U.S. 66, 123 (1825).

tinguished virtually to the point of extinction, at least in cases involving the federal-state relationship.

Indeed, one state court has administered the *coup de grâce*. In a potentially vital decision, which opens the way for state courts to become virtual lower federal courts in the administration of federal penal sanctions, the Oregon judges held, one alone dissenting, that state courts otherwise of competent jurisdiction are under a constitutional duty to accept suits for the Emergency Price Control overcharge penalty when such suits are instituted directly by the Price Administrator[8] rather than by the injured consumer. In this situation, since the Administrator acts for the government, the strictly penal character of the action could no longer be ignored or distinguished away. The Oregon supreme court clearly appreciated this. Brushing aside the rule of the Antelope case as "only an ancient shibboleth," "valid as a rule of international law," but "invalid here," it first declared the federal statute operative as law within the territorial boundaries of Oregon, and then invoked the supremacy clause to bind the state courts in their official capacities. That supremacy was "not a supremacy for defining or establishing the general jurisdiction of state courts." It was a supremacy which required that "state courts should not, in the exercise of their general jurisdiction, discriminate against rights arising under federal law (the law in Oregon)." Finally, the court found "little distinction in fact or purpose" between suits by the administrator and those by the injured party. The latter suits, jurisdiction of which had been "upheld by a weight of authority which cannot now be challenged," were intended as an enforcement device for the vindication of national policy. Far from being merely remedial of private wrongs, their strictly penal character was further shown by the unique provision of the statute which directed the United States to intervene and prosecute in aid of the consumers' suits. The Oregon majority thus employed the administrator-intervenor feature to show that the consumer proceedings cases were penal in character and thus constituted authority for the present decision, although the courts rendering these decisions generally had ignored this feature and frequently had held that the actions were remedial rather than penal.

The dissenting judge, arguing that the administrator and consumer actions are "very dissimilar," found it impossible to believe "that any government would yield to another government's courts the interpretation and enforcement of its penal laws in actions brought by the government itself." With this decision as precedent, "it will not be long," he thought, "before state courts, at the behest of federal officials and agencies, will be imposing fines and jail sentences."

[8] Bowles v. Barde Steel Company and four other cases, 164 P. (2d) 692 (Dec., 1945).

One state court stands alone against the tide. Speaking full voice, the Rhode Island supreme court unanimously declared that the court of the forum determines the nature of a cause of action, and that, in Rhode Island at least, quite regardless of the intentions of Congress and the opinions of the lower federal courts, a consumer's action under Section 205 is "heavily penal."[9] Whatever may be the case in public international law, the several states of the Union are foreign to each other and to the United States in private international law, limited only by the full faith and credit clause. They are thus free to enforce each other's penal statutes or not according to the rule of comity, "provided, however," a state "may not discriminate in favor of state laws and against the laws of the United States." The supremacy clause was expressly pronounced inapplicable: "It was never intended to be the means by which Congress could compel a state to provide, at its own expense, courts for the enforcement of federal laws which such state deemed to be penal and, therefore, unenforceable in its courts."

Statutes and ordinances adding local sanctions to the Price Control Act or extending the area of rent and tenancy control have found state courts more critical and reluctant. New York City's "little OPA," which imposed stiffer penalties than those imposed under the state's War Emergency Act earlier upheld, and which punished non-wilful violations, was easily sustained.[10] Likewise, the New York State Commercial Rent Control Act was held, one judge dissenting, to be a valid exercise of the police power.[11] The statute established a rent ceiling of 15 per cent above that charged March 1, 1943, on all commercial space in cities with a population of more than one million. Limited in duration until July 1, 1946, and based on the precedent of similar laws passed in 1920 and held valid both by the court of appeals and the United States Supreme Court, this statute's distinctive and crucial feature was its retroactivity; while it granted no right to recover past payments, it did apply to future rents under pre-existing leases. The court thought that "in the light of the emergency the act seems clearly to prescribe a most reasonable and legitimate remedy carefully designed as appropriate to the public ends in view." The "public emergency" "flowed, not merely from leases which might thereafter be executed, but even more directly from leases already made." Hence a remedy with prospective application only would be futile. Moreover, the interests of the landlord were sufficiently protected by a provision of the act for "arbitration or judicial determination of fair and reasonable rentals in all cases."

[9] Robinson v. Norato, 43 A. (2d) 467 (July, 1945).

[10] People v. Lewis, 64 N.E. (2d) 702 (Dec., 1945).

[11] Twentieth Century Associates, Inc. v. Waldman, 63 N.E. (2d) 177 (July, 1945).

In New Jersey, however, an appellate court struck down a 1944 statute safeguarding and extending residence tenancies, which thereafter could be terminated only upon six month's notice, by a landlord-owner desiring the premises for his own dwelling as his "principal year around home and legal residence."[12] The main ground for invalidation was the restricted application of the act to "cities bordering on the Atlantic Ocean in counties of the fifth class having a population of less than 150,000." That this formula was designed to catch only Atlantic City and three smaller cities in Atlantic county—all resort towns adjacent to large cities whose residents had "in great numbers been purchasing homes and dispossessing the [local] occupants"—was held to constitute an arbitrary classification despite evidence that the situation was most acute in the region named.

Cleveland's "little OPA," which simply made it a misdemeanor to violate federal price and rationing restrictions, met a similar fate.[13] The Ohio supreme court grounded its decision upon the exclusiveness of the federal war power. Congress had occupied the field with the Emergency Price Control Act upon a subject national in character, governable only by a uniform system. Not only had Congress not expressly granted concurrent power to the states, but it had manifested an intention not to do so, particularly by specifying the forums for the settlement of controversies under the act. It followed from this that Cleveland lacked authority to pass the ordinance. Moreover, the measure was subject to another "incurable infirmity." Legislative power was delegated unlawfully to a federal agency. From the very necessities of the case, the city council did not and could not establish a policy or fix standards for the guidance of the federal Administrator, the violation of whose changing orders constituted the offense.

Labor. How far labor policy has been outstripped by events is best shown by the fact that the ultimate fate of the comprehensive control statutes passed during the war in the South and West remains largely undetermined. Five state supreme and appellate courts have now rendered decisions—three (in Alabama, Florida, and Texas) generally favorable to legislative regulation, and two (in Colorado and Idaho) killing more drastic measures.[14] Although four of these rulings had already been handed down, the Supreme Court by its second and third decisions involving licensing statutes increased rather than diminished the uncertainties and hesitations earlier created by its decision in the Collins

[12] Sbrolla v. Hess, 43 A. (2d) 498 (Circuit Court, Atlantic County, July, 1945; *aff.* 44 A. (2d) 36, Sup. Ct., Oct., 1945).

[13] City of Cleveland v. Piskura, 60 N.E. (2d) 919 (Apr., 1945).

[14] For a discussion of the Alabama, Florida, and Colorado cases, see this REVIEW, Aug., 1945 (Vol. 39), pp. 699–702.

case.[15] In the McAdory cases,[16] writs of *certiorari* to review the Alabama statute were finally dismissed as lacking the requisite adversary basis pending more precise construction and application of the statute by the state courts. In Hill v. Florida,[17] a somewhat stronger warning was served. Shifting ground from free speech to the commerce clause, a majority of the judges withdrew from the state's police power, as in conflict with the NLRA, felony and alienage restrictions on the choice of union leadership. Also voided, as applied to workers engaged in interstate commerce, was a "drastic" registration sanction which forbade nonregistrants to function as unions.

As matters developed, the attitude of the Supreme Court appears to have been anticipated, though not wholly appreciated, by the Texas court of civil appeals, when, as the second court to review in entirety one of the comprehensive wartime labor statutes, it sustained the act's leading features.[18] Rendering their final decision shortly before the opinion in the McAdory and Hill cases, the Texas judges used the police power-reasonable basis test throughout. In so doing, they reached a conclusion directly opposed to that of the Supreme Court with respect to a ban on aliens and felons as union officials and agents. Such a restriction, they contended, did not deny the excluded persons the right to earn a livelihood in the common occupations of the community, as had been forbidden by the Supreme Court in Truax v. Raich.[19] On the contrary, it simply assured that persons not "in sympathy with American institutions," or not of good moral character, should never be able to occupy places of "leadership, influence, and trust" in organizations which "admittedly affect the public interest both economically and politically." The Collins decision was narrowly confined: licensing of union organizers, when not a prerequisite to speech-making, was upheld, as was the registration of unions with its normal incidents of filing names, addresses, constitutions, affiliations, and reporting subsequent constitutional changes. Such provisions invaded "no sphere of a union's activity"; indeed, they were necessary if the state was to deal with industrial strife at all. A requirement that unions keep itemized books of account, which were to be open both to member and state inspection at all times was also readily acquiesced in, but the court killed as "unreasonable" a section aimed at the same objective which required the making of a detailed financial

[15] 323 U.S. 516 (1945).

[16] A.F.L. v. McAdory, 65 S. Ct. 1384; C.I.O. v. McAdory, 65 S. Ct. 1395, (June, 1945).

[17] 65 S. Ct. 1373 (June, 1945).

[18] A.F.L. v. Mann, 188 S.W. (2d) 276 (April 4, 1945, reh., May 9, 1945, sec. reh. den., May 30, 1945).

[19] 239 U.S. 33 (1915).

report. Such a requirement, the court thought, was an excessive burden, especially on small unions. Since democracy was viewed as depending upon "the free selection of officials" as well as upon such officials not "becoming unduly amenable to . . . influence by any particular group," the section forbidding political contributions was sustained. The court stressed that this section did not apply to union members "as individual citizens" nor restrict the right of the union "to educate or inform its members as to the merits or demerits of any candidate" or party. Likewise, the ban on the work-permit fee for non-union members, although made absolute by the statute rather than merely limited, was sustained on the ground that the exaction of such a fee "could be deemed by the Legislature, as it evidently was," as not only "contrary to the policy expressed in the [act's] preamble: 'The right to work is the right to live,'" but also as an undesirable means of swelling union treasuries with fees from persons who had no voice in union affairs—the latter being a practice which could not be justified by a generalization that the non-union workers shared in the benefits of union activity. Lesser provisions requiring fair procedure in the expulsion of members, forbidding expulsion without good cause, and requiring that dues and fees collected in advance be refunded if the applicant is not admitted to membership—all were easily validated as demanding nothing more than "honesty and fair dealing." But a requirement that copies of all working agreements calling for a dues check-off be filed with the secretary of state was struck down as singling out for special treatment a right of contract neither denied nor limited by law, and therefore indistinguishable from other valid union-employer arrangements.

The Idaho supreme court circumvented all troublesome issues of free speech, commerce regulation, and due process by invoking a strictly state constitutional requirement to invalidate a curiously-worded comprehensive act, passed in 1943 and obviously designed to discourage organization of farm workers.[20] Major clauses of the act required labor unions to file annual financial statements, prohibited boycott and interference with the movement to market or the sale of agricultural commodities, made picketing upon agricultural premises unlawful, and forbade union officials and agents to engage in union activities upon agricultural premises without the owner's consent. These provisions, the court thought, failed to show "any unity of purpose" or "any clear and unified scheme." Such being the case, the act was void in its entirety as violating the constitutional injunction that "every act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title."

[20] A.F.L. v. Frank Langley, Atty-Gen., 168 P. (2d) 831 (May 3, 1946).

Other courts, beset by a flood of petitions for injunctions in mass picketing cases, were less inclined to wait for the legislature. Out of the welter of strikes in heavy industry, a crucial and fundamental issue gradually is taking shape—an issue which goes to the very roots of the decisions holding picketing to be an essentially personal right of communication derived from freedom of speech and assembly. This issue is whether peaceful *mass* picketing is illegal as inherently unpeaceful, or whether it too is constitutionally protected as free speech and assembly, no matter how much those coming and going may be "impressed" by the number of persons assembled. If it is illegal, and restrainable by injunction, is it so because force of numbers intimidates those who desire to enter the plant?[21]

In major cases that reflect a turning point both in social context and judicial psychology, these questions were foreshadowed rather than decisively answered. Indeed, the Pennsylvania and New Jersey courts, while granting injunctions against non-violent mass picketing, found and followed a third course which neither immunized such action as free speech nor enjoined it as inherently violent. Both courts took the ground that mass picketing which denies access to property is unlawful, though they reinforced this position by holding that non-peaceful incidents were also present as a minor part of the total situation. The pickets had marched "belly to back" in two lines going in opposite directions on the sidewalk in front of each gate to the plant. The technique was not to use threats or force but "to establish a wall of human bodies." With but one judge dissenting, the Pennsylvania supreme court held this conduct to be within an exception to the anti-injunction statute passed in 1939 to bring sit-down strikes within judicial control.[22] Here there was a "seizure and holding" quite as much as there had been in the sit-downs—"control of the entrance" being "control of the plant." And picketing which seizes and holds the employer's plant or which prevents, by mass picketing, violence, intimidation, or coercion, any persons from entering the plant "by the methods here employed does not fall within either constitutional, statutory, common law, or equitable protection."

To reach such conduct, New Jersey's chancery court was even prepared

[21] For evidence of how deeply involved the free speech questions have become' see Hennigh *et al.* v. International Brotherhood of Teamsters *et al.*, 11 CCH Labor Cases 63,094 (Colo. Dist. Ct. of Denver, Feb., 1946) and the following decisions of the California superior court taking opposite views of the constitutionality of California's Hot Cargo and Secondary Boycott Act: Union Ice Co. v. Sales Drivers' Union, 11 CCH Labor Cases, 63,156 (San Diego court holding the act unconstitutional, Mar. 18, 1946); Ramser v. Van Storage & Furniture Drivers Local, 11 CCH Labor Cases, 63,137 (Los Angeles court upholding the act, Apr. 30, 1946).

[22] Westinghouse Electrical Corp. v. United Electrical Radio, etc., Workers, C.I.O., 46 A. (2d) 16 (Mar., 1946).

to knock out an anti-injunction statute passed in 1941.[23] The section declaring picketing without fraud or violence to be lawful was void because the title, dealing only with injunctions, gave no notice of such matters; besides, the act unconstitutionally abridged the equity powers of the court. Those powers had been "made immutable by any mere legislative act" through a provision in the constitution of 1844 which provided that the courts "shall continue with the like powers and jurisdiction as if this constitution had not been adopted." Having thus freed its injunctive power of statutory restraint, the court next swept aside, as "obviously unsound," a contention that to limit the number of pickets and forbid obstruction of access to property violated federally guaranteed rights of speech and assembly. Complainants were declared to have a right of "free access to their plants as against any means and tactics whatever."

The crucial Michigan case already mentioned turned on whether the interests of the businessman-worker are antagonistic to those of organized labor, and on how far unions and employers should be permitted or encouraged to combine to eliminate recalcitrants.[24] Although disagreed as to the basis for their conclusions, six out of eight high court judges answered in favor of the businessman-worker. The precise issue presented was whether an owner-operated funeral parlor which sought to discontinue its membership in the AFL teamsters union could enjoin the union from peacefully picketing and invoking the terms of a contract obligating members and contracting companies not to supply equipment, goods, or services to concerns with which the union had a labor dispute or to cross the picket line. Three of the six concurring judges maintained that to continue the directors as dues-paying members was not a legitimate labor objective. The union was not seeking a closed shop, nor was it endeavoring to protect or improve the interests of labor. The Senn,[25] Wohl[26] and Angelos[27] cases thus were distinguishable, since all involved owner-operators who were in "actual competition with the union." Moreover, there was no showing of "injurious business competition" between plaintiffs and other directors and embalmers who were members of the union. Hence the adverse effect of plaintiffs' non-membership upon any group represented by the union was "inconsequential," at least, when compared with the right of plaintiffs "to unmolestedly pursue their lawful occupation." If in these circumstances the union were allowed to coerce plaintiffs into paying union dues, the logical result would be that "the union could lawfully picket the home of any bereaved family . . . to

[23] Phelps-Dodge Copper Products Corp. v. United Electrical, etc., Workers, 46 A. (2d) 453 (Ct. of Chanc., Mar., 1946).

[24] Harper v. Brennan, 18 N.W. (2d) 905 (May, 1945).

[25] 301 U.S. 468 (1937). [26] 315 U.S. 769 (1942).

[27] Cafeteria Employees Union, Local 302 v. Angelos, 320 U.S. 293 (1943).

prevent procurement . . . of needed funeral service" unless the head of the household joined the union.

The other three judges who voted for the injunction invoked Michigan's anti-monopoly statute which forbids any combination of persons "to establish and maintain a monopoly of any trade, pursuit, avocation, profession or business. . . . " They stressed the fact that by its contract the union had organized nearly all units of the field, servicing nearly one-third of Michigan's population, and "any claimed infraction of the contract on the part of the funeral directors, or other units under contract, could result in a paralysis of the funeral industry." Nor was this conclusion in conflict with the federal free speech decisions; for these did "not preclude the enforcement of the state's monopoly laws in cases where there is no labor dispute nor any interdependence of economic interests between disputants engaged in the same industry."

The two dissenting judges regarded the Senn, Swing,[28] and Angelos cases as controlling. They contended that plaintiffs were engaged in the same business and competed with members of the union. Since there was thus an "interdependence of economic interests," the union's objective was lawful and the means employed were legitimate and constitutionally protected. Moreover, since there was no purpose to establish a monopoly of business in the funeral field and the action did not result in either price-fixing or a stifling of competition, the anti-monopoly statute did not apply.

The California and Washington courts alone held out against the sweep of events, taking precepts of self-restraint seriously, if not recent constitutional fictions and half-truths. Curiously, both courts deferred to legislative action in states where a strong labor movement rendered that action least likely. Both dealt, too, with situations deriving from or complicated by jurisdictional warfare and internecine strife—situations, in short, which mark the outer-limit inadequacies of existing federal legislation.

Just how far removed the 1946 picketing cases are from the sanguine days when picketing was regarded simply as an incident of free speech was perhaps best shown in the Washington case. A breach in labor's ranks, and a *union* attack upon the use of its hard-won weapon, dramatized both the cleavages and competing pressures. AFL-CIO rivalry in the Northwest lumber industry in the summer of 1945 found the rival unions making almost identical wage demands upon employers. The CIO group chose to negotiate on the job, while the AFL membership struck and picketed CIO plants, urging industry-wide coöperation on a course of action chosen by it to enforce labor's wage demands.

[28] 312 U.S. 321 (1941).

Thus arose this novel question: Might a state court enjoin an AFL union from peacefully picketing the sawmill of an employer who, pursuant to an order of the NLRB, recognized the CIO rival as the bargaining agent? Might the court do so, that is, where the purpose of the AFL picketing was to urge CIO workers to adopt a pattern of negotiation identical with that followed by AFL in a campaign waged by both unions for a wage increase throughout an industry common to both? Were the AFL pickets exercising constitutionally guaranteed rights of free speech, or were they disrupting union contracts, interfering with the collective bargaining activities of a regularly designated bargaining agent, and impeding the flow of commerce in violation of the Wagner Act?

Reviewing its own and the United States Supreme Court's holdings on picketing as free speech, and considering the limitations created by the clear and present danger test, the majority of the Washington judges regarded the precedents from Thornhill v. Alabama[29] to Thomas v. Collins[30] as controlling.[31] The AFL pickets simply were exercising their constitutional right of free speech. Their purpose was to communicate a point of view. If the ultimate effect was to close the plants, it was because the CIO employees acquiesced and accepted the counsel of AFL pickets. Nothing in the NLRA expressly or impliedly prohibited such conduct. The AFL had made no demand upon the employer, much less one obliging him to commit an unfair labor practice; and the act's restrictions against interference with collective bargaining were intended to apply to employers, not to other unions. Finally, there was no purpose to induce a breach of contract, for which, in any event, adequate remedies would exist after the breach.

Two dissenters thought the picketing unlawful and not constitutionally protected: it constituted an interference with the collective bargaining activities of a duly chosen and certified bargaining agency. A third dissenter attacked the whole basic premise of the majority and dissent alike. "Picketing, whether peaceful or otherwise, is not a manifestation of free speech . . . ." It is "nothing less than economic pressure, economic coercion, or economic warfare . . . ." The present cases were "striking illustrations of the perversion of freedom of speech . . . . To say that the picket line's purpose is to inform and educate members of the CIO concerning the rights and desires of labor generally is ridiculous. They have already as much education on the subject as have their informers."

What attitude ought the courts to take once a union oversteps its rights and the law in its demands on an employer for a closed-shop contract? Has the union thereby forfeited its right to continue the fight? May the

[29] 310 U.S. 88 (1940). [30] 323 U.S. 516.

[31] State *ex rel* Lumber and Sawmill Workers v. Superior Court for Pierce County, etc., 164 P. (2d) 662 (Dec., 1945).

union be enjoined from further concerted activity and pressure against the employer? In the Park and Tilford case, the California court declined so to hold.[32] Rather, it took a view of tolerant *laissez faire*. The question raised was whether a labor organization can be deprived of the right peacefully and truthfully to picket and boycott for the purpose of securing a closed shop agreement where the employer is engaged in interstate commerce, where a majority of his employees are not members of the labor organization, and where the labor organization has demanded that the employer sign a closed-shop contract. The California judges conceded that such demands were unlawful as calling upon the employer to commit an unfair labor practice under the NLRA; they observed, too, that the closed shop is a legitimate labor objective under state and federal law. By a vote of four to three, they then held that the union was constitutionally entitled to picket and boycott to achieve this objective once its activities are "purged of the elements that make them unlawful." Otherwise, "in a confusion of the lawful objective still unachieved with the means originally attempted to achieve it," an injunction would be punishing past rather than preventing future unlawful activity. Having thus disposed of the unlawful demands, the court next turned to the crucial issue of whether the present concerted activities did not coerce the employer to do the very thing which had made the past demands unlawful. The court answered in the negative. It argued that "the basic conflict is between union and non-union workers"; therefore, to grant the employer an injunction on the ground that the purpose of the picketing was to drive him to unlawful interference with his non-union employees would be "to translate a conflict between groups of workers" into a conflict in which the employer would become "the contestant *ad hoc* for the non-union workers, armed with a formula that would make the very objective of the union workers unlawful." The non-union workers' right to freedom from employer interference had to be "evaluated within the context" of the right of union workers to take concerted action for a closed shop, and thus did not include the right to be free from the risk of employer interference induced by such pressure. If the non-union employees were given absolute protection against the chance that the employer might yield, the right of other workers to organize for a closed shop would be vitiated.

The three dissenting judges argued that, "in view of the uncontradicted evidence" that the unions continued their unlawful demands for a closed shop contract, the picketing and boycotting were enjoinable. To hold otherwise, "in effect declares" that because the unions might picket and boycott the employer to influence his employees to join their organiza-

[32] Park & Tilford Import Corp. v. International Brotherhood of Teamsters, 165 P. (2d) 891 (Jan., 1946, Hearing den., Feb. 28, 1946).

tions and thereby obtain a closed shop, "the same activities may not be enjoined when carried on to achieve an end openly and admittedly unlawful."

II. CIVIL LIBERTIES

The year's leading civil liberties cases suggest that but little of the hoped for magic is to be found in Justice Holmes' "clear and present danger" test. Problems of degree remain problems of degree, and honest and able men differ both as to what is "clear" and what is "present." Moreover, since it tends to be employed forensically by hard-pressed judges and counsel wherever fact situations call for a limiting rule, the test already is stretched to the breaking point and endangered by false popularity.

Freedom of the Press—Contempt. State judges seem particularly disinclined merely to begin treating *with* contempt editorial criticism which local precedents and preferences have made summarily punishable *as* contempt. Open distaste for the restrictive rule prescribed by the Supreme Court in the Bridges case pervades recent opinions in Florida and Texas. In both states, courts maneuvered to force clarification of the test and vigorously combatted its extension. The social context and overtones of both decisions dramatized the vagaries of the older, more elastic "calculated tendency" test; yet the facts of the two cases also were stark reminders of the potentialities of "trial by newspaper." The cases may well mark the outer limits of the press's freedom.

The Florida case,[33] since reversed by the federal Supreme Court, grew out of editorials and a cartoon in the Miami *Herald* attacking Dade county judges for too tender a regard for gambling interests. The judges were admonished that " . . . when judicial instance and interpretative procedure . . . go out of the way to find every possible technicality of the law to protect the defendant, to block, thwart, hinder, embarrass, and nullify the prosecution, then the people's rights are jeopardized . . . ." "The seeming ease and pat facility with which the criminally charged have been given technical safeguard have set people to wondering whether the courts are being subverted into refuges for lawbreakers."

"This week," the editorial continued, one named judge had found eight indictments for rape defective. Padlock actions against the Brook Club had been suddenly transferred from one court to another and dismissed while the state's attorney was engaged on another case. "The defense got delay when it wanted and prompt decision from the court when it profited it." The cartoon entitled, "But Judge!" showed a fawning defendant seated by a judge from whom he was receiving a "Dismissal," while an irate but ignored Public Interest protested and pointed an accusing finger at The Law.

[33] Pennekamp v. State, 22 S. (2d) 875, (July, 1945); unanimously reversed by U. S. Supreme Court June 3, 1946. 14 *U. S. Law Week*, 4386.

In upholding the conviction of the *Herald* and its editor for contempt, the majority of the Florida supreme court found the editorials to be "distorted," "inaccurate," filled with "scrambled false insinuations" and "unwarranted charges of partisanship and unfairness." As such, their publishers were liable, under the Florida cases and constitution, for abuse of the "right fully to speak and write."

In the majority's view, the telegram and editorial in the Bridges case had contained no assault upon the integrity of the court, and hence that case was inapposite. Besides, "not until 1925" had "anyone dreamed . . . the Federal Constitution had anything to do with punishment for contempt under state law . . . "; "nothing in the Bridges case" indicated a purpose to supersede state law and decisions . . . or to require state courts to conform to Federal pattern." " . . . the reservations . . . in the Tenth Amendment are still vital . . . State courts still have the power to punish for contempt."

Even if the state courts must comply with the clear and present danger rule, "they are authorized to apply it by their own law and standards, and unless the application is shown to be arbitrary and unreasonable, their judgment should not be disturbed . . . ." Thus the editorials and the cartoon afforded "ample support for the judgment imposed" . . . "the issues were properly adjudicated under Florida law." The court did not think the rule in the Bridges case applicable, "but if for any reason it may be held to be, the judgment is still free from error because it is not charged that it was applied in an arbitrary and unreasonable manner, and if it were, there is no showing to that effect. We do not think freedom of the press can be exercised in a way to vitiate fair and impartial trial, nor do we think that it can be employed to harass the court or in total disregard of approved standards of propriety, when the rights of others to the cause are adversely affected."

Two judges dissented. In their view, nothing in the editorials or cartoon imputed a want of fairness, impartiality, or integrity to any court. Nor was there any intent to influence the determination in any particular case then pending. The rule of the Bridges case should have been strictly adhered to.

The principals in the Texas case[34] were three Corpus Christi newspaper men and an elected Nueces county judge. The latter, a layman, had

[34] *Ex parte* Craig and two other cases. 193 S.W. (2d) 178 (Texas Ct. of Criminal Appeals, Feb., 1946; reh. den., Apr., 1946). Students of political and judicial ethics will find interesting material for study in State *ex rel.* Hall v. Niewoehner, 155 P. (2d) 205, wherein the majority of the Montana supreme court found guilty of contempt an attorney who by formal motion and circular letters had attacked two members of the court for having failed to disqualify themselves in a previous case. Both the majority and minority opinions presented the unseemly spectacle of high judges publicly attacking the motives and integrity of their colleagues.

compelled a jury, against its will, to return a directed verdict in an unlawful detainer action which adversely determined the rights of an absent serviceman. For this he became the object of a blistering attack in the local press. In the language of the reviewing court, "Judge Browning's action in instructing the jury, *without hearing argument on the motion* (italics added), was editorially denounced as a 'travesty on justice' and 'high handed'; as properly bringing 'public opinion down on his head'; as outraging 'public opinion,' as a 'tragedy' that the case could not be appealed to another judge who was 'able to interpret and weigh motions and arguments' of opposing counsel and to make his decisions accordingly; and as a repudiation of the 'first rule of justice,' as a consequence of which 'there is no way of knowing whether justice was done.'"

In the eyes of the majority of the reviewing court, these comments, with related objective but highly unfavorable news stories—all of which were published while the serviceman's motion for a new trial was pending—thoroughly justified the offended trial judge in holding the newspaper men guilty of constructive contempt. Though obviously embarrassed that under Texas law a lay judge's ruling should prove final on a technical legal point, the majority denied counsel permission to show the truth of the publications as a defense and firmly held that the issue was not whether Judge Browning's ruling was "correct or incorrect," but whether the offensive publications were "reasonably calculated to interfere with the due administration of justice." To be sure, the Supreme Court in the Bridges case had repudiated the "reasonably calculated . . . rule," but that case was distinguishable. Here there were no threats of future adverse criticism and action.[35] "The case pending before the court was of consequence only to the litigants. The public, as such, had no interest in the outcome . . . ."

Thus distinguished and rendered uncontrolling *on its facts*, the Bridges case none the less did supply the controlling clear and present danger rule. The newspaper men had undertaken to coerce Judge Browning into granting a new trial. "The publications were not only reasonably calculated to accomplish that purpose, but there was also a 'clear and present danger' that they would, and the likelihood that such result would follow was 'extremely serious' and 'the degree of imminence 'extremely high.'"

One judge dissented. It was hard to say, he thought, in view of breaches of law and equity at the detainer trial, that the "relators were attempting to 'influence the court . . . *contrary to law and justice.*'" Truth, moreover, should have been permitted as a defense to the charge of contempt. Finally, the public had a vital "interest in proper and effective [court]

[35] The judges appeared to be unaware or unconcerned that the Supreme Court in the Bridges and Los Angeles *Times* cases had held that even the *presence* of such threats did not render the comments contemptuous.

procedure," and, "considering the subject matter," the publishers' comments had been "fair and reasonable."

Freedom of the Press—Obscenity. How blurred the clear and present danger test has become through attempted application to fact situations in which it has little or no validity was well revealed in two cases involving allegedly obscene publications. In the first, the supreme judicial court of Massachusetts held[36] that Lillian Smith's best-selling novel of race relations, *Strange Fruit*, fell within the prohibitions of the notorious Comstock law which condemns to punishment "whoever publishes, . . . sells or distributes" a book "which is obscene, indecent or impure, or [which] manifestly tends to corrupt the morals of Youth." Although the majority opinion made a distinguished effort to formulate a test of obscenity as applied to a serious work of literature, the court found it enough in the final analysis if a reasonable judge or jury could hold that the book fell within the prohibited categories. A neat tabulation of offensive passages having served in this regard, "no substantial constitutional question" remained. However, "if the . . . 'clear and present danger' doctrine" should be held to apply "to cases like the present," the majority thought the "danger of corruption of the public mind a sufficient danger . . . ." One judge believed that the court had construed the statute correctly, but disagreed regarding application to a serious study, especially since adolescents were not, as the majority contended, "avid readers of novels."

In the second case, the New York court of appeals upheld[37] a sweeping statute which made it a misdemeanor for any person to "print, publish, sell, lend or distribute" "any book. . . magazine, newspaper, . . . principally made up of criminal news, police reports, or accounts of criminal deeds, or pictures, or stories of deeds of bloodshed, lust, or crime." Troubled by neither the breadth nor ambiguity of a statute potentially applicable to a librarian loaning a set of the *Newgate Calendar*, the majority opinion argued that the captions "Indecency" and "Obscene Prints and Articles" manifested a clear intent to reach publications made up of stories or pictures of deeds of "bloodshed and lust" which might incite to violent and depraved crimes. Such was the appellant's publication, "embellished with pictures of fiendish and gruesome crimes, . . . besprinkled with lurid photographs of victims and perpetrators", and filled with articles bearing such titles as 'Bargains in Bodies,' 'Girl Slave to Love Cult,' and 'Girls' Reformatory.'" The court indicated it would be time enough to worry about the draftsmanship when the law had been misapplied. Arguing that the legislature should have set forth its conception of morality more precisely, the Chief Judge thought the statute "so vague

[36] Commonwealth v. Isenstadt, 62 N.E. (2d) 840 (Sept., 1945).

[37] People v. Winters, 63 N.E. (2d) 98, (July, 1945); *cert. gr.* 66 S. Ct. 339, argued Mar. 27, 1946; restored to docket for reargument, Apr. 22, 1946.

and indefinite as to permit punishment of the fair use of freedom of speech."

Freedom of Religion. "Which is more important, to give the public added protection, over that of the penal statutes, against annoyance, inconvenience, and possible fraud, or to preserve intact the cherished right of religious liberty?"

This question, asked in a minority opinion, arose with regard to Los Angeles ordinances which licensed junk and second-hand dealers and which licensed and minutely regulated "promoters" who solicited for "any charitable purpose." Were such ordinances constitutionally applied to the Gospel Army, an unincorporated evangelical organization which used the proceeds of salvage gathered by solicitors working from its four trucks, and sold in its salvage shop, to maintain a mission, propagate religious doctrine, and provide aid for the poor?

Answering in favor of the police power,[38] a bare majority of the California judges saw the problem as essentially one of regulating solicitation of funds for general welfare purposes—purposes with respect to which the "state itself has an active responsibility." The provisions simply required promoters and solicitors to submit proof of good character and reputation, present facts to enable the public to determine the nature and worthiness of the charity, show financial responsibility by means of a bond, and authorized the administrative board to withhold licenses of applicants whose character and reputation were deemed unsatisfactory. Such requirements were all reasonably designed to prevent fraud—were indeed "common in statutes regulating admission to professions and occupations involving duties of a fiduciary character." Moreover, the ordinance regulated *all* charitable solicitations—specifically differentiating and exempting those "made solely for evangelical, missionary and religious purposes." There was thus no discrimination; and, since the Board had no authority to decide "what constituted a religious cause," there was no censorship of religion in the manner forbidden by the Cantwell[39] decision. Charitable and welfare activities "characteristic of the secular life of the community" were subject to reasonable police regulation "even though . . . carried on by a religious organization." The licensing board had no discretion to withhold a license; and it was not to be presumed that municipal officers would use their powers " 'villainously or for purposes of oppression and mischief.' " Freedom to believe and freedom to act both were embraced in religious freedom, but only the first ever could be absolute.

Deploring a charity so " 'scrimped and iced,' " two dissenting opinions vigorously attacked the majority severance theory: charitable purposes

[38] Gospel Army v. City of Los Angeles, 163 P. (2d) 704 (Nov., 1945).
[39] 310 U.S. 296 (1940).

could not properly be separated from the religious purpose which induced them, lest in due course religious organizations be penalized for the good works and impulses that are the very life blood of religion. The majority argument that religious motivation was a tenuous and impracticable standard by which to test regulability cut both ways. Moreover, as applied to the Gospel Army, the $2,000 bonding requirement and the $25 fee for a solicitor's license were onerous and unfair—a direct tax on the right of engaging in missionary evangelism such as the Supreme Court had invalidated in Murdock v. Pennsylvania.[40] This was doubly true since more "respectable" and highly-organized charities had in practice been exempted from these requirements. Underlying both dissenting opinions was a plea for liberality and *laissez faire* in this field "beyond situations of [obvious] emergency."

Together with pressure from importunate counsel, the movement of the Supreme Court of the United States toward this liberal position, made even clearer by its recent decision upholding the right of Jehovah's Witnesses to proselytize upon posted property and streets in company-owned towns,[41] promises an early showdown on the claimed right of members of this sect to pursue their calling uninvited in hotels[42] and on other posted private property. Almost without exception, state courts have held to the view that trespass after warning is not to be sanctioned in the name of religious freedom;[43] and it seems doubtful, despite the orientation of the federal majority in favor of religious freedom, if the right to proselytize on private property will be further extended.

Subversive Organizations. In the year's nearest approach to a *cause celèbre*, a California appellate court reversed the convictions of nine Los Angeles "Friends of Progress" who had carried on pro-Nazi propaganda immediately before and after Pearl Harbor.[44] Frankly expressing doubts as to the constitutionality of California's Subversive Organizations Registration Act of 1941, the judges nevertheless declined this opportunity to determine its validity, although invited to do so by the parties and by the

[40] 319 U.S. 105 (1943).

[41] Marsh v. State, 66 S. Ct. 276 (Jan., 1946), reversing Marsh v. State, 21 S. (2d) 558 (Ala. ct. of app. Jan. 9, 1945; reh. den., Feb. 13, 1945) 21 S. (2d) 564 (Ala. Sup. Ct. Mar. 29, 1945, *cert. den.*).

[42] See People v. Vaughan, 150 P. (2d) 964 (1944), wherein the appellate department of the Los Angeles superior court rejected arguments that loud knocking on rooming house doors at 9:30 Sunday morning, over the manager's objections, was conduct protected by the constitutional guarantees of freedom of speech and religion.

[43] People v. Bohnke, 38 N.E. (2d) 478 (N.Y. ct. of app., 1941) *cert. den.*, 316 U.S. 667; State v. Martin, 5 S. (2d) 377; (La. Sup. Ct., 1941; Massachusetts v. Stanton, 48 N.E. (2d) 678 (Mass. Sup. Jud. Ct., 1943); People v. Dale, 47 N.Y. S. (2d) 703 (Utica City Court, 1944). Cf. Martin v. City of Struthers, 319 U.S. 141 (1943).

[44] People v. Noble, 158 P. (2d) 225 (Apr., 1945; reh. den. May, 1945).

Civil Liberties Union as an *amicus curiae*. Rather, they concluded that the demands of a statute which required "proof of . . . advocacy of the overthrow of the Government of the United States by force and violence" had not been met by "mere proof that appellants indulged in intemperate, unreasoning, sinister and iniquitous criticisms of our form of government, our officials and our allies, or praised a different form of government." Likewise, evidence was insufficient to show that the groups had been "subject to control by a foreign power," the alternative prohibition of the act. "Constructive crimes . . . are repugnant to the spirit and letter of English and American criminal law," and should not be established even against "individuals [who] have by their acts and statements justly earned the contempt of patriotic Americans." Thus the only case which fell within the fact situation which originally evoked the "clear and present danger" test was disposed of on the basis of the insufficiency of the evidence rather than by the application of the rule.

III. GOVERNMENT AND BUSINESS

Glacier-like in mass, stereotyped in doctrine, and generally undistinguished in rhetoric, cases involving the regulation of business and the professions nevertheless have outstanding merit. They reveal collectively, perhaps even better than the leading cases previously discussed, the trends in constitutional law and the competing influences which shape it. Because of the vagueness and generality of the constitutional clauses, and the consequent flexibility and freedom of judicial judgments, the self-assigned rôle of the judiciary in our economic system is cast in bold relief. Obviously, the task is not to detail these cases, but to report emergent patterns.[45]

The "trend toward guildism,"[46] characterized by efforts of professional and occupational groups to achieve varying degrees of self-regulation under state auspices, appears to have been checked. Major cases and statutes not only are fewer, but courts show less disposition merely to acquiesce in legislative determinations. This is especially true where the activity "professionalized" by the legislature is not readily distinguishable in "knowledge, training, and skill" from the common callings, and where there is an element of monopoly tending to squeeze out marginal workers and curtail the right to enter. Thus the North Dakota[47] and Florida[48] courts, following the trend in four states, upset statutes which defined and regulated professional photography, created boards to test and license practitioners,

[45] For this reason, cases have been cumulated from 1942 to date.

[46] J. A. C. Grant, "The Guild Returns to America," *Journal of Politics*, Vol. 4, pp. 303, 336 (1942).

[47] State v. Cromwell, 9 N.W. (2d) 914 (1943).

[48] Sullivan v. DeCerb, 23 So. (2d) 571 (Nov., 1945).

and made practice without a license a misdemeanor. Illinois' supreme court struck down a clumsily-drawn scheme for administrative testing and licensing of professional engineers.[49] The act defined professional engineering as "any professional service" which requires "the application of engineering principles and data," exempted from its provisions "any other recognized profession or trade," and left to "the opinion of the committee" administering it the qualifications, training, or credentials necessary to secure a license.[50]

Nowhere is evidence of the strong ebb-tide plainer than in the case of the barbers. In 1941, courts were almost evenly divided on legislation aiding their drive for subprofessional status. Since then, unanimous courts in Arkansas,[51] Indiana[52] and Oregon[53] have all rejected measures embodying the familiar self-established, self-administered controls over prices and hours. Price-fixing provisions obviously contributed to the results.

The statutes upheld, and the tone of dissenting opinions, also reveal mounting opposition to self-regulation. The business of real estate brokerage, in which opportunities for fraud, though not unique, are at least substantial, was held by the Alabama supreme court to be susceptible to regulation by licensing and examination for competence and integrity.[54] Although this is but a step beyond blue sky laws, and similar controls are exercised in upwards of two-thirds of the states, two dissenting justices protested the trend toward guildism whereby "an exclusive self-governing status is achieved by the device of securing a majority membership on administrative boards . . . , and . . . the power of the state is heavily in-

[49] Krebs v. Thompson, 56 N.E. (2d) 761 (1944).

[50] Legislative exclusion of an enterprise from an area of its market, especially when that area is left open to others, generally receives short shrift from the courts. Thus a unanimous Illinois supreme court voided a legislative distinction between banks and trust companies in an act which had forbidden small loan concerns to pledge notes and securities of their borrowers except with banks authorized to do business in the state. In Illinois, banks and trust companies are subject to the same official and are both under bond for the faithful performance of duties. Metropolitan Trust Co. v. Jones, 51 N.E. (2d) 256 (1943).

The Illinois court, lavish in its use of the judicial veto, also struck down a statute creating a state building authority empowered to construct and operate buildings suitable for the state's office needs in cities of 75,000 or more. Extraordinary features of the law constituted the governor, lieutenant governor, and five other high elective state officers, together with two appointive members, the body corporate charged with determining the state's needs for such buildings; and empowered the corporation, subject to the governor's approval, to issue up to $12,000,000 of income bonds to finance the cost of acquiring, constructing, and maintaining and operating the property. People v. Green, 47 N.E. (2d) 465 (Ill., 1943).

[51] Noble v. Davis, 161 S.W. (2d) 189 (1942).

[52] State Board of Barber Examiners v. Cloud, 44 N.E. (2d) 972 (1942).

[53] LaForge v. Ellis, 154 P. (2d) 844 (Jan., 1945).

[54] State v. Polakow's Realty Experts, Inc., 10 So. (2d) 461 (1942).

voked by way of prosecutions in the criminal courts of those who are unable to secure the approval of the board . . . to engage in the occupation."

Similarly, the cleaning and dyeing industry, by turning its notorious health and fire hazards to account, won undivided judicial approval of a moderate form of licensing and administrative self-regulation in Oklahoma[55] and New Mexico.[56] Significantly, price-fixing was at issue in neither state, and the trend of decisions already was two-to-one in the dry cleaners' favor.

The traditions of a "free market" and the memory of its excellence die hard. Stressing that its earlier decision, reversed by the United States Supreme Court in Olsen v. Nebraska,[57] had dealt solely with the power of the legislature to regulate private employment agencies, not with the reasonableness of the regulations made, the Nebraska judges outlawed as "unreasonable, prohibitory, and confiscatory" a provision which limited maximum fees of such agencies to ten per cent of the first month's salary.[58]

An interesting example of the different results frequently reached in "hard" and "close" cases was afforded in four eastern states. During 1938–39, the legislatures enacted statutes which forbade service stations to post signs advertising gasoline prices except in the form of small placards of prescribed size attached to each pump. In due course, judges obviously were compelled to choose between upholding the canons with reference to the wisdom of legislation (here ostensibly directed against misleading advertising) and voiding a convenient form of price-fixing (aimed at unadvertised brands sold on the basis of price appeal at independent stations). To date, judges in New York[59] and Massachusetts[60] have chosen the first course; those in New Jersey[61] and Connecticut[62] the second.[63]

[55] Jack Lincoln Shops, Inc. v. State Dry Cleaners Board, 135 P. (2d) 332 (1943).

[56] State v. Cauthen, 152 P. (2d) 255 (1944).

[57] 85 L. Ed. 1305 (1941).

[58] Boomer v. Olsen, 10 N.W. (2d) 507 (1943).

[59] People v. Arlen Service Stations, 31 N.E. (2d) 184 (1940).

[60] Slome v. Godley, 23 N.E. (2d) 133 (1939); Merit Oil Co. v. Director of Necessaries of Life, 65 N.E. (2d) 529 (Mar., 1946).

[61] Regal Oil Co. v. State, 10 A. (2d) 495 (1939).

[62] State v. Miller, 12 A. (2d) 192 (1940).

[63] In areas where the health element is distinct, but is less immediately apparent than in the practice of medicine, and where the occupational group is neither so ancient nor reputedly so honorable, the "standards of conduct . . . which are traditional in the competition of the market place" are on the whole constitutionally prohibitable, although not without strong judicial dissent. Statutes or municipal ordinances forbidding advertising the price of eyeglasses or lenses were sustained unanimously by the Wisconsin court (Ritholz v. Johnson, 17 N.W. (2) 590 (Feb., 1945); upheld four to three by the Ohio court (City of Springfield v. Hurst, 56 N.E. (2d) 185 (Aug., 1944); and vetoed five to two by the Michigan supreme court

Even Sunday and other closing laws have met with increasing judicial opposition. A penal statute applying to "every person who keeps open on Sunday any store, workshop, banking house, or other place of business . . . " but exempting a long list of specified businesses was judicially nullified in Utah.[64] The act distinguished between "pharmacies or the prescription counters of . . . drug stores . . . " and places selling "sick-room" supplies other than compounded medicine; and also between confectionary stores and grocery stores selling the same items. It was pointed out that under this arrangement, in small towns, the general store would be unable to sell items available for purchase in larger communities with more specialized shops.

An ordinance limiting barber shops to eleven hours on week days and twelve hours on Saturdays was invalidated in Ohio.[65] In reaching this result, the court expressly overruled Wilson v. Zanesville,[66] which had upheld a similar barbers' ordinance. In the intervening period, Toledo's attempt to fix the hours of retail grocery stores had been unanimously set aside and, looking back, the majority thought any distinction in treatment of the two types of business unwarranted. Kentucky judges took a similar view of an ordinance which required all places of business to

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(Ritholz v. City of Detroit, 13 N.W. (2d) 283 (Feb., 1944). In the opinion of the Michigan majority and Ohio dissent, the evil sought to be remedied was a business evil—"the prevention of false, fraudulent, and misleading advertising"—and, so long as glasses and lenses may be sold "as an ordinary item of merchandise by anyone who may desire" . . . , prohibiting price advertising is an unconstitutional interference with "private business." These judges leaned heavily on an earlier Ohio case invalidating legislation against advertising the price of haircuts. Repudiating this analogy, as well as the view of the goals and operation of the ordinance, the Wisconsin court, the Ohio majority, and the Michigan minority maintained that price advertising here resulted in competitive price-cutting. Low price in turn induced the public to buy, and opticians to sell, "glasses of poor workmanship and material, equipped with poorly ground lenses"—defects which cannot readily be detected by the wearer and which often seriously impair eyesight. Thus, prohibiting "such bait advertising" "has a real and substantial relationship to the public health." For the same reasons of health, the state might forbid outright the retail sale of glasses as merchandise to be selected by the customer, and, that being so, lesser measures designed only to discourage the practice are well within the police power. It was conceded by all hands, and unanimously upheld by the supreme court of Virginia (Ritholz v. Commonwealth, 35 S.E. (2d) 210 (Sept., 1945), that licensed optometrists could be placed under this limitation.

[64] Broadbent v. Gibson, 140 P. (2d) 939 (1943).

[65] City of Cincinnati v. Correll, 49 N.E. (2d) 412 (1943). In a case involving only the particular closing hours, not the power to close, which had earlier been upheld, the New Jersey supreme court sustained an ordinance closing barber shops on Wednesday afternoons and holidays. Amodio v. Board of Commr's of Town of West New York, 43 A. (2d) 889 (Sept., 1945).

[66] 199 N.E. (2d) 187 (1935).

close between midnight and four a.m., holding it unconstitutional as applied to restaurants.[67] Even a declaration that it was a war measure confined to the emergency failed to save a St. Louis ordinance closing gasoline stations during certain hours to private cars and while leaving them open to common carriers.[68]

Judicial use of the "doctrine of changed conditions" is of extraordinary interest during periods of war and reconversion. Conceding that "many, perhaps all, of the adverse conditions" which occasioned the Moratorium Act of 1933 had since disappeared, the majority of the New York court of appeals nevertheless refused to invalidate the legislature's tenth annual renewal of that statute.[69] So long as the legislative remedy was "appropriate, reasonable, and legitimate," as it was deemed to be here, these were matters for legislative discretion.

Two years earlier, South Dakota's supreme court unanimously refused[70] to be bound by the legislative declaration of emergency conditions and struck down the mortgage moratorium extension act passed in 1942. The judges concluded that depression conditions no longer existed in South Dakota and that the statute could not constitutionally outlast the emergency. They pointed to a similar finding by the Nebraska supreme court as early as 1938, by the Iowa supreme court in 1939, and by the Arizona supreme court in 1940.

Anachronistic fence laws which impose absolute liability on railroads for livestock killed along unfenced rights-of-way, but which fail to impose similar liability on competing highway carriers, even though the public danger and damage are demonstrably greater, were considered by the Texas court of civil appeals.[71] In view of the legislature's broad discretion in the matter of classifications, the court declined to hold that the act, previously upheld as to railroads, had become discriminatory. As a matter of fact, motor carriers were subject to many regulations inapplicable to rail lines; moreover, the extensive differences in modes of operations made the distinction reasonable.

In marked contrast with the generally critical attitude displayed by the courts toward business and professional regulation is the sympathetic treatment accorded dominant agricultural interests. Here the courts not only interpose relatively few obstacles to the police power—they join with legislatures to smooth the way for novel, even drastic, measures.

[67] City of Jackson v. Murray-Reed-Slone, 178 S.W. (2d) 847 (1944).

[68] Heil v. Kaufman, 189 S.W. (2d) 276 (Sept., 1945).

[69] East New York Savings Bank v. Hahn, 59 N.E. (2d) 625 (1944). One judge dissented.

[70] Petition of Oleson, 3 N.W. (2d) 880 (1942).

[71] Fort Worth & D. C. Ry. Co. v. Welch, 183 S.W. (2d) 730 (1944). See this REVIEW, Vol. 36, p. 684 (Aug., 1942); Vol. 37, p. 659 (Aug., 1943).

Beneficial mainly to large cattle-owners, a Kansas statute of 1941 which prohibited the defacing of any brand "upon live stock," was upheld even though it made it a felony for one to overbrand his own stock.[72] A drastic act, designed to preserve the cotton industry against inroads of the pink boll worm was unanimously sustained in Texas.[73] The statute authorized administrators to prohibit and regulate the growing of cotton in infected areas, granted them broad discretionary powers as to exceptions, and made unlawful the production or marketing of cotton in or from such districts except as the commission allowed.

A North Dakota initiative measure adopted in 1932 which prohibited "corporation farming . . . " and which directed corporations owning farm lands not reasonably necessary in the conduct of their business to dispose of them within ten years was twice unanimously sustained by the state supreme court[74] as applied to a non-profit charitable foreign corporation whose land had been acquired seven years before passage of the act, and sale of which could be effected within the ten-year period only at a considerable loss.

Even when economic interests are relatively evenly balanced, as between lessors and tenants, the courts sometimes show reluctance, but still permit legislative intrusion. Iowa's supreme court sustained a 1939 amendment to the farm tenancy law which required that, unless written notice be given by either party before November 1, the lease should continue on the same terms and conditions for the next crop-year, beginning the following March. The majority upheld the requirement on the theory that it was a reasonable exercise of the police power in a predominantly agricultural state to seek to promote stability of tenure as a means of reducing soil exploitation and waste.[75] Three dissenting judges, deploring the measure as a long step towards regimentation of agriculture, were "reminded of the words of . . . Jefferson, 'were we directed from Washington [sic] when to sow and when to reap, we should soon want bread.'"

Strictly promotional legislation is likewise upheld, even though it may involve an essentially partial use of the power to tax or borrow. Thus the Louisiana supreme court sustained, as being for a public purpose, a 1942 act which created a state Sweet Potato Advertising Agency and which imposed a tax of one cent per bushel the first year and two cents thereafter on all sweet potatoes shipped in Louisiana excepting those used on the farm or processed.[76] Going a step further, the majority of the court held

[72] State v. Morton, 148 P. (2d) 760 (1944).

[73] Williams v. State, 176 S.W. (2d) 177 (1943).

[74] Asbury Hospital v. Cass County, 7 N.W. (2d) 438 (1943); 2d case 16 N.W. (2d) 523 (1944); affirmed 66 S. Ct. 61 (Nov., 1945).

[75] Benschoter v. Hakes, 8 N.W. (2d) 481 (1943).

[76] Louisiana State Dept. of Agriculture v. Sibille, 22 So. (2d) 202 (Feb., 1945, reh. den. Apr. 30, 1945).

the tax to be collectable only on potatoes shipped by middlemen. Shipments by growers were exempt because Louisiana's constitution expressly forbids license taxes on those "engaged in agricultural pursuits," and because farmers transporting and selling their own produce previously had been held to be so engaged. Two judges argued that since the constitutionality of the tax as applied to farmer-shippers had not been raised by the facts, the court should have expressed no opinion upon it.

Though a large number of specific constitutional clauses were involved, the Utah supreme court had but little more difficulty in sustaining, except as to one minor feature, a water conservation act passed in 1941.[77] For the purpose of "conserving, developing and stabilizing supplies of water for domestic, irrigation, power, manufacturing and other beneficial uses," the act authorized the district courts to form water conservancy districts on motion of a minority of the benefited property-owners and in the absence of a formal protest by a fixed percentage of them. The districts became political subdivisions of the state, with all the powers of municipal corporations.

Overlooking tinctures of state socialism, Alabama's judges advised Governor Sparks that they could find nothing objectionable in the 1943 statute which created a state market board endowed with broad power of acquiring sites, erecting structures, and installing equipment necessary for inspection, refrigeration, drying, canning, packing and marketing of agricultural products (including all staple food crops as well as fruits, vegetables, poultry, dairy and fish), and which authorized the establishment of reasonable maintenance and service charges for facilities on a non-profit, non-revenue basis.[78] A clause expressly forbidding the state to "engage in works of internal improvement" presented no difficulties. Earlier cases were distinguishable. In the judge's words, "time moves on" and "government takes account of the measured step of progress."

[77] Patterick v. Carbon Water Conservancy District, 145 P. (2d) 503 (1944).
[78] *In re* Opinion of the Justices, 22 So. (2d) 521 (June, 1945).

AMERICAN GOVERNMENT AND POLITICS

TREATIES AND EXECUTIVE AGREEMENTS

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There have been several recent attempts to change the Constitution by dispensing with the necessity for the advice and consent of two-thirds of the Senate in the making of treaties. The two-thirds rule is undoubtedly a handicap to the freedom of the Executive in concluding arrangements with foreign countries. It was intended to have such effect; but the check proves to be irksome. It is the author's belief that the check is exceedingly valuable to a democratic government, and while it unquestionably slows up the process of making international commitments, it insures a popular control over treaties and it safeguards the small states in a manner which an easier method of approval might escape.

The first method of eliminating the Senate was suggested in 1941 when Mr. Wallace McClure, of the Department of State, wrote his book[1] advocating the interchangeability of the treaty and executive agreement, concluding that anything that could be done by treaty could also be done by executive agreement, with the approval of Congress if necessary, without the approval of Congress if possible. In his support, he invoked what purported to be a growing usage to this effect, as proof of which he cited numerous agreements. These statistics have doubtless been aided by the supposedly unlimited power over foreign affairs assigned to the federal government by Justice Sutherland in the Curtiss-Wright case,[2] a case which has been much misunderstood and the dictum of which has been vigorously criticized.[3] I ventured to review Mr. McClure's book,[4] and came to the conclusion that the dilapidation of the Constitution which he foreshadowed was unjustified by the facts and harmful to the United States. While Mr. McClure's views met a somewhat mixed reception in the Department of State, there is some evidence that his proposals appealed to certain groups.

The second effort consisted in a proposed amendment to the Constitution of the United States giving the House an equal share with the Senate in the approval of treaties and making majorities of those present in the

[1] Wallace McClure, *International Executive Agreements; Democratic Procedure Under the Constitution of the United States* (New York, 1941).

[2] United States v. Curtiss-Wright Export Corp., 299 U.S. 304 (1936).

[3] Charles A. Beard, *The Republic* (New York, 1943), pp. 217–218. Patterson, "*In re* the United States v. Curtiss-Wright Corporation," 22 *Texas Law Rev.* 286, 297; 445 (1944); Judge Quarles in 32 *Georgetown Law Jour.*, 375 (1944); David Levitan, in 55 *Yale Law Jour.*, 476 (1946).

[4] 42 *Columbia Law Rev.* 887 (1942).

House and Senate sufficient for this purpose.[5] Mr. Sol Bloom, chairman of the Foreign Affairs Committee of the House, published a pamphlet assigning fourteen reasons why the House should be deemed a co-equal party to the ratification of treaties.[6] Based upon Secretary Hay's unfounded analogy between the Senate and a bullring, and upon the refusal of the Senate to ratify the Covenant of the League of Nations, and endorsed by numerous persons who believed that a similar fate might overtake UN, the proposed amendment, known as the Sumners Amendment, received considerable public support. When the amendment came before the House May 1 to 9, 1945, considerable opposition developed, so that Mr. Sumners seemed glad to accept the Schwabe amendment, which substituted for a majority of those present a majority of the enrollment. Thus, for ratification 218 would be necessary in the House and 49 in the Senate. Such an amendment was passed by the House at the last session. It was then sent to the Senate, where it was assigned to a subcommittee of the Judiciary Committee of which Senator Hatch is chairman. I am advised that the amendment is not believed likely to receive a two-thirds vote in the Senate and a vote of three-fourths of the legislatures of the states, so that it is likely to take its place with the hundreds of other amendments that have been proposed and allowed to rest in peace.

Even among the advocates of the amendment there are many who have denounced the executive agreement as an improper way of circumventing the Constitution.[7] The amendment, be it said, is a perfectly proper method of accomplishing the desired result. Objection can be raised, however, to the indirect efforts that have been made recently to bring about an amendment without going through the amending process.

In recent years, especially when an appropriation was desired, various devices have been employed to obtain the consent of certain senators while nevertheless avoiding the necessity for a formal treaty, so that the two-thirds rule was circumvented. This has been done by including the proposed agreement in legislation, after the consent of certain senators to

[5] Edwin Borchard, "The Proposed Constitutional Amendment on Treaty-Making," 39 *Amer. Jour. Internat. Law*, 537 (1945).

[6] Bloom, *Treaty-Making Power; Fourteen Points Showing Why the Treaty-Making Power Should be Shared by the House of Representatives* (Washington, 1944).

[7] See *N. Y. Times*, Apr. 17, 1944, p. 22, col. 1; *ibid.*, May 22, 1944, p. 18, col. 2. See also Colegrove, *The American Senate and World Peace* (New York, 1944), pp. 31, 110; Borchard, "Shall the Executive Agreement Replace the Treaty?", 53 *Yale Law Jour.*, 664, 677, n. 44 (1944); Mr. Gossett of Texas in 91 *Cong. Rec.*, May 1, 1945, at 4082; Mr. Kefauver of Tennessee, 91 *Cong. Rec.*, May 2, 1945, at 4111; Miss Sumner, *idem*, at 4137. Said Mr. Celler of New York, another proponent of the amendment: "But such procedure [the executive agreement] is not wise nor is it healthy," *idem*, at 4117; Mr. Baldwin, *idem* at 4129 ("bypassing" the Senate, people, or Constitution); Mr. Wadsworth, *idem*, at 4134; Mr. Robinson, 91 *Cong. Rec.*, May 9, 1945, at 4420 ("working around the Constitution").

waive their treaty rights was obtained or assumed. In other cases, this has been done by delaying presidential signature of the agreement until House and Senate had authorized the joining of an international association, such as Bretton Woods and FAO. It seems not to be admitted that the device of incorporating the proposed agreement in legislation is a circumvention of the Senate. But at all events, these instances are cited as illustrations of the inroads already made and as precedents proposed to sustain further inroads now to be officially made upon the Senate's two-thirds power. Notable among these cases are the Canadian Reciprocity Agreement of 1911 with Canada, the unanimous authorization to join ILO, the UNRRA agreement, the Bretton Woods Agreement Act, the Food and Agriculture Administration, the civil aviation agreements, the UN Participation Act, and a few others. An attempt will be made to outline some of these proposals and to show that the method employed involved a compromise of the two-thirds rule which warrants criticism while yet enlisting reluctant support.

The Reciprocity Tariff Act of July 26, 1911,[8] lacks several elements which make it a citable precedent. In the first place, President Taft did not conclude an executive agreement with Canada, but left his arrangement as a "proposed arrangement" to be enacted into law by Congress. In the second place, he got the approval of the leaders of Congress before he made even the proposed arrangement. In the third place, Congress adopted the proposed arrangement as a statute in full in the act of July 26, 1911, and did not merely approve an executive agreement made by the President. As we know, the arrangement was not accepted by Canada and never became law. Had the President acted upon Section 3 of the act of July 26, 1911, doubtless "ratification" would have meant reënactment and not mere approval.

UNRRA. A subcommittee of the Senate Foreign Relations Committee was consulted by the Department of State before UNRRA was introduced as legislation. Senators Vandenberg, La Follette, and Green joined in proposing forty-three changes in the draft agreement concluded by the Executive. After the foreign countries had agreed to these changes—the method being known as the Green-Sayre formula—the UNRRA Agreement was incorporated in the joint resolution which was submitted to Congress. There further changes were made in UNRRA, after an understanding with the senators mentioned that they would ask the Senate not to insist on the Senate's prerogatives. Since it involved an appropriation of $1,350,000,000, it would have had to come before the House in any event. So the Senate agreed to the method by which it was short-circuited, and thus the United States was authorized to become a member of UNRRA. The Senate was consulted in this informal way. The senators exercised

[8] 37 Stat. 4.

their influence upon the legislation, and they recommended that the Senate's prerogatives be waived.[9]

Food and Agriculture Organization. The constitution of this organization was proposed by the Interim Conference at Hot Springs in 1943, and a committee of senators from the Foreign Relations Committee made drastic changes in the document before it was submitted to the Congress. This is described in the *Record* by Senator Vandenberg. After the constitution was thus changed, it was re-submitted to the Congress, and the President was authorized by joint resolution of July 31, 1945, to accept membership in FAO for the United States. Signature of the President was delayed until Congress so authorized him. It makes a substantial difference whether the President acts first or last. For the former, supported by "approval" of Congress, there is no authority.

ILO. The United States Congress, by unanimous vote, *authorized* the President to accept membership in this organization. An invitation was thereupon promptly extended to the United States by the Organization and was accepted on August 20, 1934.[10] The drafts of the ILO have never been acted upon by the Congress, because our labor legislation is far in advance of that recommended by the Geneva organization. Membership was authorized by act of Congress and accepted pursuant thereto. The vote, moreover, was unanimous, so that of course two-thirds of the Senate joined. That fact alone may be deemed a waiver of the Senate's constitutional privileges.

Bretton Woods Agreements Act. The substance of the Bretton Woods agreements was incorporated in legislation embraced in the act, much as the act of July 26, 1911, which contained the tariff concessions contemplated in the proposed arrangement with Canada. The act was not an approval of an executive agreement theretofore made, but it contained all the salient features of the agreements, including the appropriation necessary to carry them out. Again, by a questionable device, the Senate acquiesced in its own circumvention. Senators Wagner and Tobey were appointed delegates to the convention. Since Congress would under the banking and appropriation power have had to act on the matter in any event, the Senate was disposed not to insist on its prerogatives. The President delayed his signature of the agreement until the act was passed. Besides, the final vote in the Senate was 61 to 16—much more than the constitutional two-thirds.

United Nations Participation Act. UN had already been accepted as a treaty 89 to 2. Since the Participation Act was merely an execution of the

[9] Briggs, "The UNRRA Agreement and Congress," 38 *Amer. Jour. Internat. Law*, 650 (1944).

[10] Edwin Borchard, *Opinion on the Question Whether the St. Lawrence Waterway and Power Project Can be Concluded by Executive Agreement with Canada or Requires a Treaty* (revised, Washington, 1946), p. 63.

treaty, there was no reason to insist that the supply of troops be left to the Senate by treaty, for the supply of troops to the Security Council is especially a function of the House and Senate. Besides, this was one of the exceptions which Justice Holmes can be construed to have made in Missouri v. Holland.[11] For that reason, it seems perfectly natural that the Congress should vote the necessary supply of troops.[12]

Aviation Agreements. The American Federation of Labor is reported[13] to have objected to three of the aviation agreements concluded at Chicago because, purporting to change the provisions of the Civil Aëronautics Act, this should be done by treaty only and not by executive agreement. It is perhaps superfluous to remark that executive agreements on any subject are superseded by subsequent treaties inconsistent therewith.

The Loan to Great Britain. The loan to Great Britain required a large appropriation by Congress. Congress was not asked to "approve" a previous executive agreement, but the terms of the agreement were included in legislation before Congress. Whatever we may think of this avoidance of the two-thirds vote of the Senate, the fact that the whole agreement was before Congress for enactment as legislation tempers the objection.

Senate Insistence on its Prerogatives. It is noteworthy that when the Senate wishes to insist upon its two-thirds control, it can, if advised of the executive agreement, insist that the agreement be converted into a treaty. This is what happened in the Santo Domingo fiscal agreement of

[11] 252 U.S. 416 (1920).

[12] Edwin Borchard, "The Charter and the Constitution," 39 *Amer. Jour. Internat. Law*, 767 (1945).

[13] *N. Y. Times*, May 19, 1945, p. 20, col. 3. See AFL Report of Committee on "Freedom of the Air," approved by Executive Council May 4, 1945. Arne C. Wiprud, Special Assistant to the Attorney General, in "Some Aspects of Public International Air Law," 13 *Geo. Wash. Law Rev.*, 247, 264 (1945), maintains that bilateral executive agreements have been entered into for temporary purposes only, until a treaty could be concluded, that multilateral agreements should be incorporated in treaty form, that the Executive should not purport to fix, much less violate, the policy of Congress, and that treaties would be much less vulnerable to constitutional attack. He says (*idem* at 266): "The Executive may act in these matters in one of three ways: he may enter into executive agreements as an emergency matter to protect and further the interests of the nation; he may enter into particular agreements pursuant to a special or general authorization by Congress; or he may conclude treaties subject to the approval of the Senate." The Department of State is "of the strong opinion, . . . that nothing done or provided for under the three agreements exceeds the authority contained in existing legislation." 12 Dept. of State Bull., No. 312, p. 1103 (1945). Cf. article by Latchford, *idem* at 1104. See also Sen. Doc. No. 56, 79th Cong., 1st Sess. (1945), pp. 16–18. As to the Bermuda Aviation Agreement, see resolution of protest adopted by the Senate Commerce Committee by a vote of 17 to 1, *New York Times*, Apr. 16, 1946, p. 1, col. 7.

1905 and in the oil agreement of 1945. To speak only of the oil agreement, the following reflects the course of events.

On August 24, 1944, the President sent to Congress the oil agreement of August 8, 1944, with Great Britain. The record discloses that it had first been intended to conclude the plan by independent executive agreement. Senators Connally and Maloney heard of the intention and became apprehensive at the proposed submersion of the Senate's prerogative if the Foreign Relations Committee should decide that the subject ought to be dealt with by treaty. The chairman, Mr. Connally, thereupon asked a distinguished lawyer, Mr. Henry S. Fraser, general counsel of the special committee investigating petroleum resources, to make a study of the subject of treaties and executive agreements for the committee's information. On the basis of historical studies, Mr. Fraser came to the conclusion that there were certain subjects involving future legislation, including oil production and distribution, which could not be dealt with by executive agreement but required a treaty.[14]

Thereupon, the President was notified. Senator Connally, after examining the agreement, expressed the opinion that it would never receive the approval of the Senate. The industry learned of the agreement. They expressed the belief that it undertook to centralize the administration of the oil industry in a Petroleum Commission and in the federal government—which, however, was not obliged to accept the recommendations of the Commission. By legislation, that government could practically control all production, allotment, and marketing of oil—invalid in the absence of a treaty. In addition, no immunity from prosecution under the anti-trust laws for following the orders or recommendations of the International Petroleum Commission, when approved by the United States, was assured.

On January 10, 1945, the agreement was withdrawn by the President for renegotiation as a treaty with Great Britain.[15] A revised draft treaty was proposed by the committee. A closed hearing of the Petroleum War Council of the industry was later held and certain fundamental changes were suggested. After renegotiation in London, and approval by the industry, the treaty was resubmitted to the Senate. It is now understood that the Texas oil operators are objecting to the pending treaty on the ground that it vests too much power in the federal government. The incident illustrates the danger of the executive agreement, in attempting to commit an industry without its knowledge and to change the constitutional distribution of powers between state and federal governments.

[14] See Fraser, "Treaties and Executive Agreements," Sen. Doc. No. 244, 78th Cong., 2d Sess. (1944); also letter of Mr. Fraser to Senator Connally, Aug. 14, 1944.

[15] See 11 *Dept. of State Bull.*, No. 290, p. 63 (1945). "It appears to the Department that the misunderstandings which have arisen come not from lack of agreement upon these objectives, but from the implementing features attending them."

This section should not, perhaps, be closed without a presentation of the statistics showing that in recent years the executive agreement has tended to submerge the treaty. John Bassett Moore has given me permission to use the annexed table which he prepared. It shows the recent treaties and executive agreements, tabulated according to year of publication:[16]

Year of Official Printing	*Treaties*	*Executive Agreements*
1930	25	11
1931	13	14
1932	11	16
1933	9	11
1934	14	16
1935	25	10
1936	8	16
1937	15	10
1938	12	24
1939	10	26
1940	12	20
1941	15	39
1942	6	52
1943	4	71
1944	1	74
1945	6[17]	54

More recently, the movement to eliminate the Senate two-thirds rule has taken on still larger proportions. Based upon the assumption that in the above-mentioned cases the Senate has waived its two-thirds rule—and waiver, if committed often enough, would be construed as an abandonment of the rule—it is now proposed that treaties, called executive agreements, shall be sent to the Congress for its "information" and there receive a majority vote of approval by House and Senate.[18] This is justified on the alleged ground that when a treaty relates to a matter which domestically is within the legislative power of Congress, the Executive is at liberty to turn a treaty into an executive agreement, send the agree-

[16] Another statistical record comes to the following conclusion:

	Treaties	*Executive Agreements*
1789–1839	60	27
1839–1889	215	238
1889–1939	524	917
	799	1182

91 *Cong. Rec.*, May 2, 1945, at 4118. See also Wright, "The United States and International Agreements," 38 *Amer. Jour. Internat. Law*, 341, 345 (1944).

[17] This includes the still unpublished water treaty with Mexico, in force since November 8, 1945. *Dept. of State Bull.*, Dec. 2, 1945, p. 901.

[18] "Constitutionality of St. Lawrence Legislation." Memorandum Submitted by the Department of State to a Subcommittee of the Committee on Foreign Relations, United States Senate, on S. Joint Res. 104, 79th Cong., 1st Sess., pp. 1, 5.

ment to Congress for its "information," and there solicit the approval of a majority vote in House and Senate.

Since practically all treaties deal with subjects within the legislative power of Congress acting domestically, this would include nearly all treaties, so that we have the following situation as presented by S. J. Res. 104, soliciting Congressional approval of the St. Lawrence Waterway and Power Project.[19] Whenever the State Department is of the opinion that a nearly unanimous vote can be obtained in the Senate, or at least a two-thirds vote or better, it would be willing to submit the treaty in the constitutional way for two-thirds Senate approval. On the other hand, when the Department is more doubtful of a two-thirds vote of approval, it could turn the treaty into an executive agreement, send the agreement to Congress for its "information," and there solicit the approval of the majority of Congress. This latter method I believe to be flatly unconstitutional, since there is no procedure for sending an executive agreement to Congress for its "information" and no procedure by which the majority approval of Congress can be solicited as against the two-thirds vote of the Senate. The agreement is not incorporated in an act or resolution, but the Executive simply seeks majority approval of the executive agreement.

The proposal would effectively amend the Constitution of the United States by affording the Executive an option which under present procedure he does not have. The rationalization of this method is without authority in law, since there is no such distinction between treaties as those within the domestic power of Congress and other treaties. As a matter of fact, while in our early days the Executive did conclude treaties giving citizens of Great Britain,[20] France[21] and Switzerland[22] the right to own real estate in the United States, thus overriding the laws of the states, it has for a long time been the practice of the Executive not to enter into such treaties. Is it now proposed that the same results shall be achieved by independent executive agreement, with or without majority votes in Congress? And is the "authorization" of Congress to enter into an executive agreement, as in tariff and postal legislation, the same thing as *approval* of a prior executive agreement by Congress? If that is the program, it would be perfectly possible for the Executive to enter into an executive agreement on any subject with Mexico or Canada, and then solicit the approval of the same majorities in Congress that are

[19] "Great Lakes-St. Lawrence Basin," Hearings before a Subcommittee of the Committee on Foreign Relations, United States Senate, 79th Cong., 2nd Sess., on S. J. Res. 104, Feb. 18-Mar. 9, 1946.

[20] Treaty of 1794, Art. IX. Malloy, *Treaties, Conventions, etc.*, Vol. I, p. 597.

[21] Treaty of 1778. Art. XI. Malloy, *Treaties, Conventions, etc.*, Vol. I, p. 471; Treaty of 1800, Art. VII, *idem* at 498; Treaty of 1853, Art. VII, *idem* at 531.

[22] Treaty of 1847. Malloy, *Treaties, Conventions, etc.*, Vol. II, p. 1762.

necessary to pass federal legislation. Thus the power of the states could gradually be drained away and the government changed from federal to unitary. Such a change is, in fact, desired by many proponents of the constitutional amendment.[23]

The debates in the House on the Sumners amendment elicited the assertion that when the President is of the same party as the majority members of House and Senate, the Executive has it within his power to influence the majority to vote as he desires. The proposal, therefore, would greatly strengthen the executive power and weaken the senatorial control over treaties.

The suggestion that a Congressional power may not be the subject of a treaty has been advanced on numerous occasions and always rejected as unsubstantial. We find Calhoun in 1844 speaking as follows:

"... So far, indeed, is it from being true, as the report supposes, that the mere fact of a power being delegated to Congress excludes it from being the subject of treaty stipulations, that even its exclusive delegation, if we may judge from the habitual practice of the government, does not [so exclude it]—of which the power of appropriating money affords a striking example. It is expressly and exclusively delegated to Congress, and yet scarcely a treaty has been made of any importance which does not stipulate for the payment of money. No objection has ever been made on this account. The only question ever raised in reference to it is whether Congress has not unlimited discretion to grant or withold the appropriation."[24]

We find Secretary Kellogg in 1919 expressing himself as follows:

"The argument is as old as the history of treaties in this country. It was presented with great ability by the opponents of the Jay Treaty and overcome by the able statesmen of that time, foremost among whom was Alexander Hamilton. From that day to the present time, the question has been frequently raised in connection with treaties for the payment of money, regulating commerce, fixing import duties, regulating rights of trade with foreign countries, fixing boundaries, and various other subjects, the objection being that as the power to legislate in relation to these matters was in the entire Congress, any treaty made by the President and the Senate was therefore void. But these objections have proved unavailing and a large number of treaties have been made and ratified by the Senate where legislation was necessary to carry them into operation."[25]

So also affirmed Acting Secretary Grew and the Legal Adviser of the Department of State.[26]

Alexander Hamilton, in 1794, when the Jay Treaty was under consideration, scotched the argument that Congressional power over a subject militated against its use by the treaty-making power. And since then the courts have been unwilling to place any limitation upon the treaty-

[23] Borchard, "The Two-Thirds Rule as to Treaties; A Change Opposed," *Economic Council Papers*, Vol. III, No. 8 (1945).

[24] Hackworth, *Digest of International Law*, Vol. V (1943), p. 164.

[25] *Ibid.*, Vol. V (1943), p. 12.

[26] *Ibid.*, p. 15.

making power which may appropriately be the subject of international relations.[27]

To point up the invalidity of assuming the interchangeability of the independent executive agreement and the treaty, we note in parallel columns the fundamental differences between the two.

	Treaties	*Executive Agreements*
1.	A treaty, as is evident from Missouri *v.* Holland, is like a constitutional amendment. It can deal with any subject appropriate to international negotiation.	An executive agreement is strictly limited. It can deal only with subjects especially delegated by Congress or, if made independently by the President, can deal only with normal powers vested in the commander-in-chief and principal diplomatic officer.
2.	A treaty can do what Congress cannot. It confers legislative power on Congress (Missouri v. Holland).	An executive agreement cannot do what Congress cannot. It cannot confer on Congress powers of legislation it did not have before.
3.	A treaty must be ratified to be binding, according to American practice.	An executive agreement need not be ratified by the United States.
4.	A treaty, as its name indicates, binds the United States for its duration. It cannot be repealed by act of Congress except for domestic purposes only. The international obligation remains binding.	An executive agreement, as its name indicates, "binds" only as long as it suits *both* sides. It morally "binds" only the signing Executive, not his successors. If they wish it to continue, it is by voluntary act. An executive agreement is subject to repeal by act of Congress domestically and internationally. Unilateral indication of desire to terminate suffices. Repeal of authorizing statute suffices.
5.	A treaty has a special significance in constitutional law. It can repeal an act of Congress.	An executive agreement is unmentioned in the Constitution and has grown only through the necessity of making agreements of a character not to warrant submission to the Senate. It can be repealed by Congress at any time, but cannot repeal an act of Congress. It can, of course, be nullified or abrogated by treaty, prior or subsequent.
6.	A treaty, by the Constitution, is the "supreme law of the land."	An executive agreement, with a few exceptions as to contrary state law or when made pursuant to act of Congress, is not supreme law of the land.

[27] Geofroy v. Riggs, 133 U.S. 258 (1890). It may be that Missouri v. Holland, 252 U.S. 416 (1920), presents a limitation in that while a treaty gives Congress the power to legislate, the treaty power is limited to questions not designated as unconstitutional. This would not include the making of treaties on subjects within the legislative power of Congress.

7. Only a new treaty can alter or modify an earlier treaty.	An executive agreement cannot alter or modify a treaty.
8. A treaty is submitted to the Senate for formal consideration and consent, rejection, amendment, or reservations.	An executive agreement is not "submitted" to Congress for consideration or for approval, rejection, amendment, or reservations. There is no procedure for subsequent approval, sanction, or ratification by Congress.
9. A treaty lasts, with unimportant exceptions, as long as its terms provide.	An executive agreement is terminable at any time at the unilateral wish of one of the parties. This is true even if it purports to run for a given number of years. No successor to the President is bound by the latter's agreement, although he may consent to permit an agreement to stand.
10. No secret treaty can be made by the United States. Treaties must be published.	An executive agreement invites secrecy, since the President can make it without notifying anybody. Several secret agreements are now known.

It adds nothing to clarity to cite the cases where Congress has "authorized" the Executive to enter into agreements carrying out the intent of Congress. [We are discussing only the independent executive agreement made by the President under his power as commander-in-chief of the Army and Navy and principal diplomatic officer of the United States.] Even under the latter head, his power is strictly limited by the Constitution, and he can enter only into subordinate types of agreement well known to the profession. The agreement itself is vulnerable to change by himself or his successors or by Congress. In no sense is it binding upon the nation.

The summary presented above will indicate the various stages of the struggle to get rid of the two-thirds rule. For reasons transcending any issue that is now before the public, I think the movement undesirable and that, as above observed, it would strengthen the executive power and weaken the legislature. The two-thirds rule has an important function to fulfill in the American government. It was well thought out and deserves preservation.

FOREIGN GOVERNMENT AND POLITICS

PROPOSED CHANGES IN BRITISH PARLIAMENTARY PROCEDURE

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Parliamentary democracy in Britain has once again to face and solve a problem which in itself is by no means new. It has to find the means of preserving, under the conditions of today and tomorrow, two principles, each of which is fundamental to democratic government, but which tend in times of major change to come into conflict. The one is that Parliament, as the supreme power in the state, shall retain its full and unchallenged control over public policy, both in legislation and in administration; the other, that the public business shall be efficiently conducted—that the right things shall be done at the right time. For in so far as the system fails on the former count, it ceases to be democratic; and to the extent that it fails on the latter count, its repute, and even its very existence, may be endangered.

It is commonly admitted that the British parliamentary machine has at times—and in recent years with increasing frequency—been overworked. Changes in the law called for by new situations, by public demand, or by administrative expediency are liable to be postponed from session to session for lack of parliamentary time, until the right moment for decision has passed. Matters which deserved full discussion are liable to be decided in haste under some form of closure of debate. The choice of subjects for legislative projects in any particular session tends, at times, to be determined as much by sectional pressures of one kind or another, public or departmental, as by a considered weighing of the public interest or a general plan of policy.

From time to time during the last fifty or sixty years, as the scope and range of the business of government has widened, this problem has reemerged. Changes in the procedure of Parliament are proposed, discussed, and sometimes adopted. There is nothing static about the Standing Orders, except the basic principles upon which they rest. Today, when the situation of Britain in an uprooted world clearly presages a period of major change and of great parliamentary activity, the problem is again asserting itself in an acute form. Now, less than ever, can we afford to live under a régime of "too little and too late." Hence changes in parliamentary procedure are again in prospect; although before dealing in detail with them and the reasons for them, a word may be said about general background.

Under the British system of responsible government, while there is a

clear *distinction* between the legislative and executive branches of government, there is no formal *separation* in the sense that the legislature and the executive are each independent of the other. On the contrary, the Executive Government (commonly known as His Majesty's Government, or H.M.G. for short) is at all times and in all matters answerable to Parliament, and in particular to the elected House of Commons. If a majority of that House, or even a minority which includes any significant proportion of the Government's supporters, at any time refuses assent to the Government's proposals in any matter of moment, the Government is forced to resign, or to call for a general election in order that a fresh mandate may be obtained from the electorate.

It is a logical complement of this constitutional position that proposals for legislation should emanate almost entirely from the government of the day. Private members have indeed a limited right to introduce bills. A few of these, if acceptable to the House, if not met by any strong sectional opposition, and if favorably regarded by the Government, do in fact pass eventually into law. But they are very exceptional. Similarly, the allocation of the time of the House is in practice, and subject to the expressed wishes of the Opposition in major matters, controlled by the Government. The fact that the government in office must represent, and is in a sense the creation of, the majority party in the House leads inevitably to this situation. Perhaps the most conspicuous feature of the British system of government is its high degree of integration.

It must not, however, be inferred that the influence of the Government over the House and its business is or can be exercised in any arbitrary or overbearing way. On the contrary, Parliament is by long tradition jealous of its privileges and rights, resolutely master of its procedures, and very difficult to dragoon. Like marriage, the relationship between the Executive Government and the House works only with a large degree of mutual respect and forbearance. The power of the Executive over the House has, in the last hundred years, steadily grown; but there are still definite limits to what any Government can do.

Possible means of relieving the pressure on the time of Parliament fall under three heads: (1) extended use of parliamentary committees in place of the Committee of the Whole House; (2) simplification and acceleration of parliamentary procedure; and (3) delegation of legislative powers.

1. *Parliamentary Committees.* Every bill introduced into the House of Commons (and the same applies to the House of Lords) has to pass through five stages before it receives the royal assent (a pure formality) and becomes law. These stages are: (1) the "first reading," which is purely formal, but operates as a public notice that legislation on the subject is imminent: the actual bill is not available at that stage; (2) the "second reading," at which the principal purposes and main outlines of the bill

(already circulated) are explained and debated; (3) the "committee" stage, in which it is examined clause by clause; (4) the "report" stage, in which the bill as amended is reported to the House, and new clauses or major amendments—especially any which the Government has undertaken to propose—are debated and decided; and (5) the "third reading," at which the final decision to pass or reject the bill as a whole, or as amended, is taken.

Originally, the "committee" (stage 3) was simply the whole House of Commons under another name and with slightly different procedures. But in 1832, when the pressure of the social reforms of that period lay heavily upon Parliament, the practice of referring bills of lesser importance to standing committees of a limited number of members for clause-by-clause examination was invented, and nowadays all bills except those of major importance or extreme urgency normally go to one or other of the standing committees. Even so, it is found that with the present procedures not more than two major measures can be passed through Parliament in any session (about eight working months). We are thus confronted with the dilemma that if a ministry has more than two major measures in its immediate program, either some of these will have to be dealt with by a standing committee or they will have to be deferred to a later session. Hitherto, in deference to Parliamentary tradition, the latter solution has been adopted, sometimes with serious disadvantage to the general interest.

The late Coalition Government under Mr. Churchill took this recurrent problem into consideration and made certain suggestions which are now being examined by a committee of the House. They are: (1) The committee stage of all bills, whether of major or secondary importance, to be handled by one of the standing committees and not by the whole House, with certain exceptions, of which those which matter are: urgent bills (such as that which implemented the Bretton Woods Agreement); bills imposing taxes or making appropriations; and bills of first-class *constitutional* importance (such as the "Statute of Westminister"). The exception of financial bills is less important than it might seem, for under British practice the taxation of the year and the appropriations for the year are debated in the form of resolutions or "votes" of which the bills, normally three for each session, are merely a formal summarization in legislative form. (2) The number of standing committees for bills—at present three—to be increased. (3) The committees to sit for longer hours. (4) Special and improved "closure" or timetable arrangements for these committees to be introduced and to be regulated, not by the committees themselves or their chairmen, but by a separate all-party committee.

These proposals in effect mean more use of committees and more committees, working longer hours and with greater speed and stronger safe-

guards against obstructive tactics. At this point, a brief account of what the committees are and how they work may be of interest.

What The Standing Committees Are. There are at present three standing committees of the House for handling the committee stage of public bills. Membership may range from 30 to 85, but is normally between 50 and 60. A quorum is always 20. Each committee comprises two elements—the "nucleus" members chosen on general grounds to serve on the committee throughout the session, and the "specialist" members who are added for the consideration of a particular bill on the ground of special knowledge of or interest in the bill's subject-matter. A "nucleus" member who is not interested in a bill can always ask to be discharged from the committee for that bill. For bills applying exclusively to Scotland, there is a special Scottish standing committee. Subject to the foregoing, each standing committee is a replica in miniature of the House itself. The parties are represented proportionately, and while there is a guarantee of some members with special knowledge of the subject, the ordinary member predominates.

Chairmen are assigned by the Speaker from a Chairmen's Panel, chosen at the beginning of each session by the Speaker from among members specially qualified by experience or competence to serve as chairmen, without regard to age or standing. The standard is high, and there has at times been difficulty in securing enough members competent and willing to perform this exacting duty.

The procedure of a standng committee follows closely that of the House itself. Decisions are reached by vote after debate, at which the minister responsible for the bill, or his deputy, is always present. There is no taking of testimony, whether from witnesses or in writing. Party attitudes and loyalties operate almost (not quite) as strongly as in the House itself, though the atmosphere is freer and less formal, and party discipline not so strongly enforced. If, as occasionally happens, a decision is taken by a standing committee which the Government feels it impossible to accept, the decision is reversed in the House itself at the report stage after due debate. So, broadly speaking, the consideration of a bill in standing committee is in essentials the same thing as its consideration in the House, and parliamentary tradition is strongly against any departure from this principle. The idea of such a committee as a body of fully-informed people sitting round a table to hammer out in detail a policy approved in principle and outline by the House may be attractive, but is certainly not realistic.

Fuller Use of Standing Committees. Clearly, therefore, the proposal to handle more bills in the committee stage through standing committees amounts merely to enlarging the plant to handle a bigger output; it does

not involve any change in process or design. There is, however, a school of thought which demands changes of that character. It advocates smaller and more specialized committees, a free procedure much less dominated by party discipline, and the hearing of evidence from official and other expert witnesses. Its main argument is that, the House having approved the general purposes and principles of the bill on "second reading," the function of the committee stage is to see that these are properly and effectively worked out in detail; and that what is needed for this purpose is free examination of the specific provisions on their merits, with whatever expert assistance is needed for that task. It is impossible at this writing to say whether any developments in this direction will result from the examination of the problem now proceeding. It is, however, permissible to observe that the British tradition favors a strong Executive Government, expects it to have the initiative, and holds it responsible for its exercise. Any change in procedure which would tend to weaken that initiative and responsibility, even in matters of detail—as such changes would—is likely to meet with formidable opposition.

Indeed, the proposal to send to a standing committee bills of a kind hitherto regarded as needing examination by the whole House operates in the contrary direction. The more important the bill, the more the prestige and authority of the ministry is involved in getting it passed in the form and detail designed by the ministry. Some changes will almost certainly be made in committee in any bill, either to placate opposition on non-essential points or to remedy unforeseen defects or omissions. But the more important the bill, the less willing will the majority of the House be to delegate to a committee the responsibility of scrutinizing it in detail, unless it is assured that the responsibility of the Government and of the party behind it are as fully maintained over the proceedings in committee as they are over those of the House itself. Individual members may, and often do, wish for freedom from party ties at particular times on particular issues. But the parties as a whole expect their ministries to know their own minds, to have at their own command all necessary expert knowledge and advice, and to present their legislative proposals in well-thought-out and workable shape.

Other Committee Changes. The other proposals with regard to standing committees call for little comment. The longer hours of sitting mean a further demand on the time of members, and thus tend to confirm what is already a fact, that membership in the House of Commons is nowadays practically a full-time job. Some regret will be felt at this final departure from the old British tradition that the House should consist of representative citizens of varied callings who not only have practiced, but continue to practice, those callings as far as their parliamentary duties permit. Britain dislikes the professional politician and wants the House to be a

typical cross-section of the nation. But this ideal was never more than partially realized, and there has throughout been a preponderance, at different times, of "country gentlemen," lawyers, company directors, and labor leaders. Indeed, from this point of view the present House is probably more widely representative of the nation than any of its predecessors. But the growing demands on the time of members, both for the actual proceedings of Parliament and for the many extra-parliamentary duties that fall to their lot, have made it almost impossible for them to engage in anything else, while the House is sitting, save the lightest and most adaptable of part-time professions. Thus the question of the adequate remuneration of members is once more raised. At present, this remuneration is, by general agreement, not enough to live on.

The remaining proposal is to speed up proceedings in committee by a fuller use of closure. The method proposed is that of the fixed time-table for decision on the various sections of a bill. The purpose is to limit the scope, not only for mere prolixity and garrulousness, but also for deliberate obstruction (filibustering). At present, the powers, though they exist, are inadequate. There is no formal time-table regulating the proceedings on a bill, nor any use of the device of selecting for debate one amendment out of a group which all turn on the same point and ignoring the rest. It is noteworthy that the closure or time-table arrangements for each bill would be made, not by the committee concerned, but by a separate standing committee.

2. *Simplifying Parliamentary Procedure.* The second way in which time can be saved in Parliament is by simplifying the procedure of the House itself. No definite proposals in this direction have been made either by the present Government or its Coalition predecessor.

Without going into the technicalities of British parliamentary procedure, it is perhaps permissible to mention the salient features of the problem. First, as to the facts. In the five sessions of the years 1926–30, it has been calculated that the time of the House of Commons was allocated approximately as follows:

	Per cent
Business initiated by the Government	85.9
Business initiated by the Opposition	1.7
Private members bills and motions	11.2
Ceremonial business	1.2
	100.0

These figures bring out the preponderating part played by the Government of the day in the choice of business to be done, and in the time allocated to it. Indeed it is quite usual, when the pressure on the House is heavy, for the Government to propose and the House to vote a resolu-

tion assigning to Government business for the rest of the session the whole of the time allocated by Standing Orders to private members' bills. It is just because of this overwhelming authority which the Government possesses over the agenda that schemes for curtailing the debating of that agenda are scrutinized with extreme vigilance and not a little suspicion. The most docile House will be unwilling to be converted into a voting machine.

Nevertheless, it is generally admitted that some time could be better spent than it is. It is a common complaint that many speeches, especially those of ministers and ex-ministers, are unnecessarily long; that many speeches would not be made if those who make them had better means of informing themselves beforehand of the relevant facts of the subject under discussion and the reasons for doing things in one way rather than another; that certain stages of the processes of legislation invite the repetition of arguments already heard and might well be simplified or dispensed with. Some reformers would go farther and introduce the practice of asking the House, in place of considering a bill in full detail *verbatim et litteratim*, to vote on the general principles and outlines of the measure, leaving it to an expert drafting committee, with professional aid, to turn it into a formal statute.

It is impossible to forecast what changes, if any, will commend themselves to the present House of Commons; but it seems reasonably clear that some saving of time could be achieved without impairing the authority and prestige of the House, and that some changes in this direction will be made.

3. *Delegating Legislative Power.* The third group of expedients for increasing the capacity of Parliament to handle the business it may be called upon to do lies in the field of delegation. Delegation may take either of two forms, one of which may be discussed very briefly, while the other requires fuller explanation. It may be a delegation of legislative power in specified matters to some agency of government which is independent of Parliament; or the delegation may be to the Executive Government itself, in the person of the minister concerned.

Now it is from time to time suggested that local authorities, such as county councils, elected by the citizen voters of the localities, should be given legislative powers, valid in their area, in such matters as public health, education, etc. Alternatively, it is suggested that a small number of new regional authorities covering larger areas should be created and should be vested with similar powers. No proposal on these lines has, however, received any authoritative support. The practical difficulties are great, and the saving of parliamentary time questionable. Nothing along this line seems likely to happen.

Delegation to the Executive Government is another matter. It is no novelty in British practice, and as government has more and more ex-

tended its range, so the use of this form of legislation has grown. It is now standard practice for acts of Parliament, having laid down the general principles, to empower the minister concerned to make regulations or ministerial orders establishing procedures defining and limiting personal or property rights, or specifying what are offenses under the act. For example, the procedure governing claims for benefit under the National Health and Unemployment Insurance Acts are formulated entirely in regulations made by the Ministers of Health and Labor, including the right of the applicant, if his claim is rejected, to appeal to a special tribunal set up by the minister. Similarly, the Road Transport Act leaves it to the minister to define by order what are offenses under the act on the part of automobilists and other road-users. And all these regulations and orders have the force of law.

Primarily, the matters so dealt with are matters of procedure. But the boundary between procedure and policy is hard to define, and modern practice certainly leaves to departmental legislation much that in earlier and simpler days would have been provided for specifically in the act itself.

The large extension of this use of delegated legislation has not been without strong challenge. But the necessity for it is generally recognized and admitted. The case for it rests not only on the saving of parliamentary time through the omission of much detailed legislation, but also on its flexibility and ease of adaptation to change of circumstances and to the lessons of experience. If every amendment of regulation had to be replaced by an amending bill, Parliament would break under the load.

Safeguards Against Abuse. Controversy has turned, therefore, mainly on the issue of safeguards against abuse of the system. Parliament has long insisted that regulations and orders made under delegated power shall be laid before the House within a stated time, and it has the power by affirmative resolution to annul (but not to amend) them. The courts will always entertain, and adjudicate on, a plea that a department is *ultra vires*—has exceeded the law-making power given to it by the act. No tax can be imposed by regulation, and the maximum penalties for breaches are always defined in the act itself. These safeguards are, however, widely felt not to be enough, and in some recent important cases the act conferring the powers has stipulated that regulations or orders made under them shall require confirmation by affirmative resolution of the House within a stated time. This, of course, while sacrificing some of the saving in parliamentary time, may still be a more expeditious procedure than legislation in detail in the act itself.

But none of these safeguards gives the House what it really wants—an effective machinery for the continuous scrutiny by a parliamentary agency of all ministerial (i.e., departmental) law-making. Quite recently such an agency has been set up, in the form of an all-party standing com-

mittee of the House, with instructions to examine all such legislation and to report to the House thereon. It is too early to judge whether this innovation will be effective in giving the House the reassurance for which it asks without being excessively burdensome to the members themselves or clogging the wheels of administration. What can be said with some confidence is that if it works well, the main obstacle to a further increase in the use of departmental legislation, called for by the growing need to economize in parliamentary time, will have been removed.

General Picture. To a detached observer, the general picture which presents itself is something like this. In a situation in which, with any Government, the burden thrown upon Parliament would be heavy beyond precedent, the British people have elected a Government with a clear mandate to carry through major changes both by legislation and in administration. Thus the old problem of simplifying and accelerating the procedures of the House of Commons has again arisen in an acute form. The task is to increase the efficiency of the House as a legislative organ without in any way impairing its power to control the Executive Government, or the quality of its legislation. The former would run counter to the advancing wave of democratic conviction and practice; the latter would discredit Parliament itself.

There is, therefore, no suggestion that the right and practice of questioning ministers daily, for a set period, on any matter for which they are responsible, should be in any way restricted or curtailed. Schemes for giving sub-legislative powers to other bodies not responsible to Parliament, whether existing or new, win no substantial support. Parliament, "the grand inquest of the nation," must retain its authority unimpaired. The most that is envisaged is that Parliament should further divest itself of interest in points of detail and purely executive action, while retaining control over policy and principle.

Some procedures which, though venerable, bring no advantage commensurate with the time they consume or the obstacles they create will be eliminated. There will probably be a more regular effort to inform members adequately, by explanatory memoranda, of the facts and reasons on which a bill is based, before they prepare their speeches on it. Bottlenecks behind the scenes, e.g., in the Parliamentary Drafting Office, will receive attention. The size of the standing committees may be reduced as the number is increased, though the value of this will depend on members taking their less conspicuous duties seriously—as indeed the present House, by all appearances, assuredly does.

But, with all this, our detached observer will doubtless also conclude that the Mother of Parliaments will take no step which undermines the freedom of honest debate. Debates are just talk; but it is talk that forms and changes opinions; and opinions determine action.

THE NEW POLITICAL PARTIES OF GERMANY*

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Recent reports on political events in Germany have frequently given the impression that the political parties organized there during the last few months are mass movements, based on the solid support of considerable numbers of citizens. Such a concept would, however, hardly fit the present picture. The lost war and its aftermath have left the German people stunned and discouraged. The presence of great armies of occupation and the obvious impotency of all native officials do not encourage political activities. Moreover, the German people have just passed through a period of twelve years during which every human endeavor—even of the most personal nature—was fraught with alleged or real political implications. A natural reaction set in, and even the word "politics," once hallowed by generations of German intellectuals, is frequently met with revulsion. Only a few Germans understand that political life need not necessarily conform to the Nazi pattern. The vast majority, as far as can be ascertained, still see in "politics" only blatant, showy demonstrations, incessant harangues, and the complete negation of privacy. The memory of the Weimar Republic is dim, and where it exists an often exaggerated picture is retained of the multitude of parties and the squabbles in the Reichstag, but no memory of the fine and hopeful features of the ill-fated Republic. In this respect, the spirit of Goebbels is still very much alive. But, above all, the tremendous destruction, the insufficient diet, and the never-ending and never quite successful search for the most primitive means of existence leave the people exhausted and in the main without other interests. This state of apathy is furthered, too, by the well-known readiness, if not desire, of many Germans to submit to authority. Particularly when the occupation of their country was still new, most observers found the conviction among all classes of the population that the future of Germany was entirely an Allied matter and that the exclusion of Germans from all important decisions was a foregone conclusion. Few believed that political initiative by the Germans themselves would in any way ease the situation, and many considered that such action would end only in further confusion and consequently in a harder life for all. Since the unconditional surrender, this feeling of apathy has subsided only slowly and to but a slight extent. The majority of people went to the recent communal elections without much interest and in a spirit of obedience, rather than with the idea that they were performing an act of self-government.

With this background in mind, it is easy to understand that the present

* This article, based on observations and experiences of the author in Germany, was written in March, 1946. MAN. ED.

political parties in Germany have a greater similarity to political clubs than to popular parties as understood in this country. Nevertheless, they do constitute the probable nucleus of a future political life if Germany is ever to govern herself; and they present an important educational device for arousing and training political consciousness.

As German towns and districts were conquered and occupied by Allied forces, there emerged a few former leaders of some of the pre-1933 parties. These were mostly Social Democrats, Communists, or former functionaries of the Catholic Center party;[1] and they were mostly of second-class variety, since most of the more prominent leaders had either been exiled or had died in one manner or another. In the absence of a resistance movement,[2] these men soon became local and provincial functionaries, occupying the offices of mayor, *Landrat*,[3] *Regierungspräsident*,[4] *Oberpräsident*,[5] and finally becoming ministers in the governments of certain Länder such as Bavaria.

While the first reaction of these persons might have been one of relief and elation, it soon turned out that their appointments were by no means unmitigated blessings. The newly appointed mayor or *Landrat* found that he was merely the office-boy of a military government officer who actually exercised all of the executive functions of his office. The officer would decide all questions of policy as well as of administration, and the German official was reduced to carrying out orders as best he could. Yet to the public the mayor appeared as the responsible official, and he had little chance to explain the actual distribution of power, since he had at his disposal no organ through which he could address himself to the people. There were no newspapers except those published by the Allied military authorities. Nor had any German access to the radio. And, on top of everything, political activities were forbidden. Thus, German officials were in the unenviable position of being ostensibly responsible for measures in which they had no part, gathering upon their heads the fiery coals of public criticism and at the same time being unable to explain their predicament.

It is easily understandable that German officials felt increasing concern about this situation. They feared that they were losing whatever ground they might have had, and there was much talk of resignation. However, the desire to hold office prevailed over political fear, and no large-scale resignations have been reported.

[1] In Bavaria, the Catholic party was called "Bavarian People's party" (Bayerische Volkspartei—B. V. P.).

[2] The "Freedom Action Bavaria" which operated in Munich during the closing hours of the Nazi régime cannot be called a resistance movement, and besides it has since fallen into oblivion.

[3] Head of a *Kreis* (county).

[4] Head of a *Regierungsbezirk* (government district).

[5] Head of a province.

All political activities were at first strictly prohibited within the area of command of the Supreme Commander, Allied Expeditionary Forces. But the French never took this too seriously, and the British relaxed prohibitions rapidly, after awhile allowing even regional party organizations to be formed. Only in the United States zone of occupation was the ban applied in a strict fashion and maintained longer. The prohibition worked primarily against the anti-fascist parties, particularly the Socialists and Communists, generally known under the name of "Antifa." These Antifas had to be dissolved, much to the delight of the more conservative circles, which were in no position to organize as quickly as the Leftists. But, despite the official Military Government prohibition, the organization of political parties went on all of the time under the noses of the Military Government officers, and frequently with their knowledge if not connivance. Four months elapsed after the surrender before political organization was officially sanctioned in the United States zone, and then it was on only a local basis. Recently this situation has much improved, and larger organizations are now possible. But the political parties still operate under a number of handicaps. While military government has been withdrawn from local government, it is as strong as ever on the *Land* level.[6] The greatest single handicap to a more rapid political development, however, is the complete absence of a party press. There are now in existence a considerable number of German newspapers, but their staffs are always organized on a multi-partite basis. The absence of a party press would seem to retard the political development of the country, since only a limited number of persons can be reached by public meetings, while the radio is not generally open for regular political activities.

Quite a different picture is presented by the Soviet zone of occupation. From the start, political activities were there permitted, sponsored, and encouraged, with, of course, strong favoritism in behalf of the Communist party. Nevertheless, other parties were able to organize and a considerable party press developed. The Soviet authorities also granted to the German officials in their zones a much greater measure of independence than their colleagues enjoyed in the western parts of the country. While they were held strictly accountable for their actions, they were at all times in full control of the administrative functions of their offices. It is true that many local commanders interfered considerably with the German administration. But such interference usually concerned only deliveries and services to the Red Army.

The Soviet authorities were not content with merely allowing parties to emerge by a process of natural growth. They actively sponsored four defi-

[6] A considerable strengthening of the position of the native *Länder* governments can be seen in the recently organized Prime Ministers' Conference at Stuttgart. This permanent conference of the heads of government in the United States zone is probably the nucleus of a future government for the entire American zone.

nite parties and excluded all others. These were the Communist party, the Social Democratic party, the Christian Democratic Union, and the Liberal Democratic party. Of these, only the Communists and the Social Democrats had existed prior to 1933; the others were artificial creations. Nevertheless, this plan proved both practical and popular, and has now spread to all other zones as well. The creation of these parties was an extremely shrewd move. Not only did it establish the Soviet authorities as the ostensible partisans of free, democratic institutions (in obvious contrast to the hesitant policy in other zones), but it took cognizance of the German fear of a return to the "innumerable parties" of the Weimar Republic.[7] The limitation of parties to four was, therefore, accepted with satisfaction.

Among these four parties, the Liberal Democrats are by all odds the least important. The conservative element is generally inclined to follow the more vigorous leadership of the Christian Democratic Union, which is rapidly developing into the assembling point for all who oppose Socialist and Communist doctrine. The Liberal Democratic party is handicapped also by the fact that it must appeal to the more extreme right-wing element, which is largely discredited by collaboration with Nazism or actually disfranchised by active party membership.

There was never any doubt as to vigorous Russian leadership in the government of their zone. While the four official parties were allowed to operate, pressure was brought to bear on the non-Communist groups. The pressure against the Christian Democratic Union was first applied and concentrated particularly on the former member of the Russian-sponsored Berlin government, Herr Hermes. But more important was the pressure upon the Social Democratic party. It will be remembered that in the years preceding Hitler's rise to power the German Communist party (KPD) considered the fight against the Social Democrats its main objective. After the occupation of Germany, however, the prevailing line was that of the united front of anti-fascist parties. Perhaps the Communists had hoped that they would gain the upper hand in such a combination because of their superior skill in organizing and their greater energy. Perhaps they had also expected that their good relations with the Soviet authorities would make Communist party membership desirable to many Germans. Possibly they had expected also that the inglorious and abject surrender of the Social Democratic leadership to Papen and Hitler would prevent the latter group from returning to favor with the workers. These

[7] The legend of the "innumerable parties" was spread for years by the Nazi propaganda machine and has become firmly embedded in the mind of most Germans, including even those who have very definite democratic convictions. Actually, the Weimar Republic did have a considerable number of parties, but only a few of them were of any importance.

Communist calculations, however, proved incorrect. The Communist leadership soon realized that its clarion calls found relatively little echo among the masses. Twelve years of constant anti-Communist propaganda had left their mark on the German mind; moreover, the conduct of the Red Army had done little to dispel this impression. The Communists who had the unenviable task of having to extol the Red Army found it an uphill fight indeed. That Soviet policy with regard to political parties was far superior to that of the Western Powers can hardly be doubted. But the living standard was lower in the Russian zone—despite higher rations on paper—and life remained extremely insecure. And the Germans by and large are more interested in rations than in parties; moreover, the Soviet zone was the first to receive the flood of refugees from the areas ceded to Poland, a situation which heightened the already great animosity against the Russians as well as against Communists in general.

Perhaps the Communists still expect that the masses will eventually turn to them when the disillusionment with Western, particularly American, lack of policy and support has become complete. For the time being, however, Communist numerical strength is small, even among the workers —a fact which shop-steward elections in the Soviet zone have demonstrated again and again. In fact, it is quite likely that Communist numerical strength is greater in the Western zone than it is under Soviet domination.[8] Under these circumstances, the Communists are now throwing in their entire weight in order to force a fusion of the Socialist and Communist parties. This and similar "democratic" front movements have been favorite Communist devices to assure Communist domination despite adverse public opinion. In all of the Soviet Union's satellite states where such "fusions" or "Democratic Fronts" have been formed, the Communists have retained the upper hand. It is, therefore, hardly surprising that the Communists ardently desire such a fusion, but it would seem difficult at first glance to understand why the Social Democratic leaders in the Soviet zone have also expressed themselves favorably. It must be borne in mind that Russian pressure on the Social Democrats has been largely indirect. To the author's knowledge, there have been no direct threats against the lives or the liberty of the Social Democratic leaders. Nor has there been any suggestion that the activities of their party would be curbed in the event that they reject the merger. The Social Democratic leaders, particularly Grotewohl, Fechner, and Dahrendorff, were, however, motivated by different reasons.[9] Social Democrats occupy important positions in all the governments and administrations in the Soviet zone. In those positions they are able to help their fellow party members and to

[8] Nevertheless, in the recent communal elections in the United States zone of occupation the Communists have definitely appeared as a minority.

[9] Otto Grotewohl was the most hesitant among them

distribute some patronage. By staying in office they hope to avert the worst and prevent eastern Germany from being governed like Bulgaria, Rumania, or Poland. Should they refuse the merger, they are convinced that they would gradually be pressed out of office and that the Communists would soon rule without restraint. Whether this reasoning will prove correct is much to be doubted. If the Social Democrats pursue an independent policy, they will be gradually eliminated from office whether they belong to the united party or not. The merger and the Communist domination of the new party, however, will make it easier for the Soviet leaders to replace independent-minded Social Democrats by mere stooges.

Whatever the reasoning of the over-cautious leaders, the rank and file do not share their views. Against this decision an unprecedented revolt has taken place which is still going strong at this time. The success of this revolt is somewhat in doubt; the decision to merge has already been cast, and a revocation would undoubtedly meet with Soviet disapproval. Moreover, the dissatisfied membership has no place to go. It cannot join the Communist party, against which its rebellion is directed; and for ideological reasons it does not wish to join the Christian Democratic Union. The most logical solution would be a secession and the formation of a new party. But the creation of a new party would be possible only with the consent of the Soviet authorities; and it is a foregone conclusion that no such approval could be obtained.

A further result of the merger has been a split-up of the Social Democratic party into an eastern and a western group. Orginally, the fusion was planned for the entire area of Germany, and a party conference was called at Berlin to make it official. But the western Social Democrats, headed by Hoegner, Klothe (United States zone), and Schuhmacher (British zone), refused to send delegates and threatened to expel any member who should participate. The western Social Democrats realize that Grotewohl and his associates act under great pressure. But they consider the policy of merger to be a fatal mistake and refuse to go along. Unless the actual execution of the already agreed merger can be averted by some miracle, there will be two separate Social Democratic groups in Germany for years to come, thereby widening the already existing gulf between the zones.

Unlike the Social Democrats and the Communists, the Christian Democratic Union is a new creation. In the Weimar Republic, only the Center party and its Bavarian sister group, the Bavarian People's party, presented a somewhat similar political structure. But the Center party and the BVP were Catholic parties, and the BVP particularly belonged to the Right rather than to the Center, as political alignments went.

The idea of an interdenominational Christian party fell on fertile soil. Many Protestants had desired such a party, while the majority of politically-minded Catholics saw clearly that a mere continuation of the Center and BVP was unthinkable. It was not forgotten that both Catholic

groups had voted for the so-called "Enabling Act" of March 24, 1933,[10] which really started Hitler's rise to full power; and it was particularly remembered that it was the BVP which in 1925 "discovered" Hindenburg's political potentialities and supported his candidacy for President against Wilhelm Marx, the candidate of the Center party and the Social Democrats. But while many Protestants and a sizeable group of younger Catholics hoped to find in the Union a really new party line, the old guard of the Center party and the BVP hoped and expected to reëstablish their leadership with the benefit of a broader basis. In the beginning, the old leaders were successful. Fuchs became *Oberpräsident* of the Rhine Province,[11] and Adenauer again became mayor of Cologne. Most important, however, were the developments in Bavaria. There Friedrich Schaeffer, an extreme Rightist and a prominent leader of the BVP, had installed himself as prime minister (*Ministerpräsident*) of Bavaria under the auspices of the American Military Government[12] and with the warm but unofficial support of Cardinal Faulhaber. Schaeffer immediately formed a cabinet composed of his political friends and assistants, maintaining that he alone bore responsibility towards the Military Government, and that therefore he would select people whom he could "trust." Two lone Social Democrats did sit in the Government, Hoegner (Justice) and Rosshaupter (Labor), but they were directly appointed by Military Government and not by Schaeffer. Schaeffer and his associates hoped that the creation of political parties would be long delayed and that when the time came they would have no difficulty in regaining control. Unexpected circumstances, however, thwarted their plan. From among the Catholic ranks there rose an originally small but vigorous group who have been called with some justification the "Left Catholics." They were ably led by Dr. Josef Mueller, a Munich attorney, and had the support of many members of the clergy of lesser rank, particularly the famed Jesuit Father Ruppert Mayr and *Stadtpfarrer* Muhler. Many of them had been in prisons and concentration camps, where they had sustained a close personal relationship with Socialists and Communists.[13] They saw in Schaeffer's course a road to disaster and proceeded to organize their ranks against him. They advocated far-reaching social reforms embracing many of the suggestions put forth by Communists and Socialists; they favored a considerable amount of socialization; they demanded full and loyal coöperation with

[10] *Reichsgesetzblatt* (1933) I, p. 141; Franz Neumann, *Behemoth; The Structure and Practice of National Socialism* (Toronto, New York, London, 1942), pp. 51–53.

[11] Actually only part of the former *Rheinprovinz* (now called North Rhine Province), since the *Regierungsbezirke* Trier and Koblenz were ceded to the French zone of occupation.

[12] Then commanded by Colonel Charles E. Keegan.

[13] Muhler has frequently shared the same speaker's platform with Communists and Socialists.

Social Democrats and Communists in order to reconstruct the devastated country and participated fully in the United Trade Union Movement, side by side with Socialists and Communists; and in the field of foreign affairs they demanded a positive attitude towards the Soviet Union, even though they favored a "Western" orientation.

This Left Catholic movement was sponsored by Adam Stegerwald, the former leader of the Catholic Trade Union Movement of republican Germany, a former prime minister of Prussia who is now *Regierungspräsident* of Mainfranken. But Stegerwald, believing himself too old, and perhaps also hoping to avoid discussion of the past rôle of the Center party and the BVP, declined the chairmanship of this movement and sponsored Mueller instead. He appears to be content with remaining in the background as a respected elder statesman. Not unimportant also is the fact that Stegerwald, who has been known to favor a somewhat "radical" course, has frequently been at loggerheads with Cardinal Faulhaber, while Mueller as a relative newcomer to political life has at least up to now found it easy to establish satisfactory relations with the Cardinal.

The gulf between left and right wings of the Catholic movement grew rapidly. And the deeper the rift became, the greater became Schaeffer's intransigence. Believing himself supported by Military Government, he refused to broaden the basis of his government and threatened to split the party unless he retained its leadership.

Schaeffer's reactionary policy, his retention of many Nazis in office, and his attempt to include more and more rightist elements in his administration, eventually led to an alliance between the Left Catholics, the Social Democrats, and the Communists, who agreed on a coalition government under Mueller. They were, however, powerless to force their decision upon Schaeffer, since all appointments were made by Military Government, and Military Government did not seem to contemplate any action. The defeat of the Schaeffer government and of the right wing was eventually brought about by extraneous forces. The numerous complaints against the Military Government for Bavaria and its policy of expediency found their way into the American press, and pressure was brought to bear on General Eisenhower to look into the situation. This led to the dismissal of Schaeffer and his replacement by the Social Democrat, Wilhelm Hoegner.

The dismissal of Schaeffer was desirable and long overdue. But the selection of Hoegner was undoubtedly a mistake which would not have been committed had Military Government possessed an adequate Intelligence organization. The decision to replace Schaeffer was made at the headquarters of General Eisenhower and not at Munich. The advisers to the Commander of the United States Zone had no idea of the political agreement reached between the three groups in Munich. Or if they had

known it, the fact did not seem to be available at the crucial moment. At any rate, in Berlin and Frankfurt, Hoegner was the only Bavarian liberal known. And the political record of Military Government in Bavaria did not make it desirable to consult Munich.[14] Consequently, Hoegner was selected.

It would appear to have been Hoegner's duty to reject the appointment and to suggest the selection of Mueller as the recognized head of the tripartite coalition. But Hoegner is an ambitious man, and the lure of the premiership was too much for him. This marked the temporary end of the coalition. Several members of the Catholic Group participated in Hoegner's government and are still in charge of various ministries, notably the ministry of agriculture. But they act as individuals, and were not sent into the cabinet by their party. Mueller himself refused to participate and preferred to devote himself to strengthening his position within his party. In that he was successful. Schaeffer, who had previously threatened to bolt unless he remained the leader, saw that he could not hope to regain a prominent position without the aid of the party or the backing of Military Government. But Mueller's position had become so strong that Schaeffer could not hope to achieve his aim without Mueller's support. And Military Government had been thoroughly shaken by the summary dismissal of Schaeffer and the removal of General Patton. It was not likely that it would burn its fingers again by dealing with Schaeffer. In view of this situation, Schaeffer has finally surrendered and Mueller has been elected chairman of the party. Some of Schaeffer's assistants have also made their peace with the Left, and his former chief aide, Dr. Anton Pfeiffer, the former secretary of the BVP, has now become the intimate assistant to the Social Democratic Premier Hoegner, a truly Meissnerian feat.[15]

Dr. Josef Mueller's preoccupation with gaining leadership in the party will eventually bear fruit. He knows very well that a Social Democratic premier cannot last very long in Catholic Bavaria. And then his day will come. The recent communal elections have given the Christian Democratic Union a substantial majority, and there can be little doubt that Hoegner's days as head of the government are numbered. Moreover, Hoegner's acceptance of his present post has created much ill feeling among the rank and file of the Social Democratic party, which puts his party leadership more and more in doubt. The decision to call Hoegner to

[14] It is quite probable that the Military Government for Bavaria was equally ignorant of this agreement, but the point could not be definitely ascertained.

[15] Dr. Otto Meissner, originally a Social Democrat, contrived the incredible political "stunt" of serving as secretary of state under three such radically different political leaders as Ebert, Hindenburg, and Hitler.

the premiership will, therefore, probably end in a weakening of the Social Democratic party and in a corresponding strengthening of the Christian Democratic Union. As long as Mueller and his political friends maintain control of their party, this shift may be of little consequence. But it is possible that a reaction against Hoegner's premiership may swing the pendulum sharply to the right. And if that occurs, Mueller cannot definitely be counted upon to remain absolutely faithful to his "Left" ideals. Unlike some of his idealistic associates, Mueller is a very clever, down-to-earth politician, of almost American type. Should he become convinced that the trend toward the Left has reversed itself, he will not close his mind to the realization. Mueller is capable and patient. He knows that the Christian Democratic Union has no real national leadership, but is composed of many almost unconnected regional groups, among which his Bavarian organization is probably the most important. Mueller is on good terms with Protestant circles, and he is trusted by Socialists and Communists, as well as by his own party friends. He appears to be less popular with some of the American authorities, who distrust his former connection with the military intelligence service of the late Admiral Canaris.[16] In view of the increasing cleavage between the Eastern and Western zones, a man may soon be needed who has the confidence of both.[17] Josef Mueller quite obviously is grooming himself for this rôle. It will be well to watch him in the months and years to come.

Up to the present time, all of these political developments affect only a minority of the German people. The other Germans stand aside, either because they are disfranchised or because they are apathetic. The disfranchised group is small numerically, but quite important, chiefly because many members of the intelligentsia belong to it. It is composed of all those former Nazi party members who have been dismissed from office and who are excluded from all political activities. Former career officers are in the same category. Many of them were actual Nazis or dangerous militarists. Others, however, became members in response to varying degrees of pressure or joined the regular army in order to escape the Party.[18] Only a few are under arrest. The overwhelming majority are free but unable to get employment, and using up their savings. As savings dis-

[16] Admiral Canaris's organization was honeycombed with Hitler opponents and constituted one of the principal elements in the unsuccessful uprising of July 20, 1944.

[17] Mueller never took the near-separatist line advocated by Schaeffer and Hoegner.

[18] On the other hand, there are many actual or former Nazis in responsible positions today merely because for one reason or another they did not or could not join the Party. A frequent reason for not being able to join the Party was marriage to a non-"Aryan" or former membership in a Masonic lodge.

appear, their political outlook becomes increasingly radical and desperate. Many thoughtful people, Allied and German alike, have suggested, therefore, that some way should be found by which the cases of dismissal for membership in certain organizations might be subjected to review and decided on their merits rather than in a purely blanket form. If the hope of eventual restitution is not held before this considerable group of people, they will constitute an increasingly dangerous band of outlaws, a future source of Free Corps and of every conceivable kind of violence. In short, this is a potentially dangerous cancer in the German body politic, which, if not eradicated in time, may again condemn to failure all attempts at creating a democracy. It would seem most desirable that those who can yet become valuable members of the community should gradually be absorbed by it, while the incorrigibles should be put under control in labor battalions, or, if thay have committed crimes, in prisons. The existence of a free-floating mass of disfranchised desperadoes is a grave peril. Already the Communists are trying to attract these people,[19] and a future nationalistic underground movement of which some traces can already be seen would find it even easier to gain the fanatical loyalty of a large class of people who have, in their opinion, nothing to lose and much to regain.

But the decisive factors in the future political structure of Germany are neither the politically active nor the disfranchised, but the large masses of the politically disinterested. At present these are too new to the political game, too preoccupied with the daily search for food, fuel, and shelter, to constitute an active political problem. Sooner or later it will dawn on these silent masses that they could have an important voice in public affairs, which might some day be decisive. As that realization grows, they will cast their ballots and give their support to that party most likely in their opinion to give them what they need. And the primary needs of the German people are food, fuel, clothing, and shelter. The success or failure of parties in satisfying these essential needs of the people will in the last analysis determine the success or failure of the democratic experiment in Germany. These parties are identified in the minds of the people with the concept of democracy, and it is not likely that the idea would long survive its protagonists. Success or failure, however, does not rest in their own hands. It rests with the Allied governments, which alone have the power and the resources to aid the budding democratic parties by making it possible for the German people to regain a modest but tolerable standard of living. If, on the other hand, the parties are permitted to fail, there can be little doubt that democracy will find few adherents in Germany and that the people will again look for a solution in a different direction.

[19] See the speech of Wilhelm Pieck, chairman of the Communist party of Germany. *Time*, Feb. 11, 1946, p. 34.

THE PATTERN OF CANADIAN POLITICS: THE ELECTIONS OF 1945

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The great problem of Canadian federalism is to be found in the sectionalism which is a standing challenge to national unity. Superficial conclusions drawn from the response to national recruitment, war bond drives, and such evidences, which form the stock in trade of the professional patriot, do not stand up against the realities of political behavior. This is revealed at many levels, in the parliaments (provincial and dominion), in federal-provincial relations, and finally at the grass roots as demonstrated at the polls. Geography, history, and economic considerations are woven into this pattern.

Geographically, there are four main regions—Maritimes, St. Lawrence and Great Lakes, Prairies, West Coast. Historically and culturally, the St. Lawrence-Great Lakes region is sub-divided into the former political subdivisions of Lower and Upper Canada, now the provinces of Quebec and Ontario, respectively. In terms of economics, each area presents individual problems, and as contrasting as the wheat-growing prairies and the financial-urban eastern provinces. To the sociologist, there is the complexity of peoples as diverse in background as the French Canadian of Quebec and the Central European immigrant in the West. With these factors in mind, the voting pattern of the people may be discerned, at least in part. And the 1945 general election offers an interesting case study.[1]

While four parties—Liberal, Progressive-Conservative, Coöperative Commonwealth Federation, and Social Credit—divide parliamentary representation, the election picture was confused by the multiplicity of candidates. Of 954 contestants for the 245 seats, as many as 432, on the basis of the civilian vote, lost their deposits of $200 through failure to poll one-half the vote of the successful candidate. As was to be expected, with multiple candidates in most constituencies, 59 per cent of the elected members received a minority of the votes cast in their riding. More than half (about 51 per cent) of the elected Liberals failed to win a majority over the combined vote of their opponents, while the same was true for

[1] While the full official report of the Chief Electoral Officer was not available at the time of writing, Part IV of it was issued in advance and has been used as the basis of this study, along with the *Canadian War Service Voting Regulations* official listing of the party affiliation of the candidates. The figures on aggregate votes and lost deposits are from the Canadian press dispatches of June 12 and 19, and also the *New York Times* of June 13, 1945.

60 per cent of the Conservative winners. In the case of the C.C.F., the percentage was 86, and for the Social Credit party it was approximately 86. Because of the prevalence of these minority winners, it is not possible to speak of any party decisively capturing a province unless it be in the case of New Brunswick and Quebec. In New Brunswick, the Liberals won seven seats and the Conservatives three, to the exclusion of other parties. Here also the winners, except in two cases, had clear majorities over the combined votes of their opponents. As will be explained below, Quebec followed its traditional solid adherence to the Liberal party; but more than one-third of the winners there were elected by a minority vote. Examination of the returns in other provinces shows that over one-half of the members elected in Ontario had pluralities, not majorities, three-fourths in Nova Scotia, while Manitoba and Alberta each had 15 minority winners in their respective representations of 17 members. British Columbia and Prince Edward Island stand out by electing only one member with a clear majority over all opponents.

This factor of the minority vote is emphasized here as a qualification which any conclusions derived from the statistics must take into account. However, if grand totals are considered, the province-by-province vote is set in a different perspective. Yet in a system of single-member constituencies the degree to which percentages of total vote can be regarded as significant is always debatable, though it does illustrate how major parties gain at the expense of weaker rivals. Since the recent election, the Liberals, on the basis of 39 per cent of the aggregate vote, have about 48 per cent of the parliamentary representation (excluding Independent Liberals and supporting Independents); the Conservatives, with 28 per cent of the vote, have about 26 per cent of the membership; while the C.C.F., which received 16 per cent (increased from 15 per cent by inclusion of the soldier votes) has approximately 11 per cent of the seats in Parliament.

More significant, now that the election is over, is the party distribution of the elected members by regions. In this respect, the Liberals can rightfully claim to stand out as the only party whose parliamentary following rests upon a dominion-wide basis. In every section they have a strong representation, and in no province are they without at least two members (excluding the single-member Yukon area won by the Conservatives.) It is in this regional aspect that the comparative strength of the Liberals' position is revealed. Of the 26 members apportioned to the Maritimes, the Liberals secured 19, which is approximately 73 per cent. In Quebec, it would appear that they suffered a slight decline, with 46 out of 65 members, or 70 per cent, although if there be added to this number seven Independent Liberals and from three to seven Independents (some of whom have indicated that they will support the Administration), the

number is nearer to the 60 which is the normal following the Liberals draw. Clearly, the revolt of the Bloc Populaire, which elected only two members, made little impression.

In Ontario, where the Liberals secured about 41 per cent of the representation, their showing surpassed pre-election predictions, which forecast a Conservative sweep due to the Liberal party's disorganized condition as shown in the provincial election of the previous week.

As one moves westward, the party's hold grows weaker in the face of the challenge of the parties of the left. Out of a total of 55 seats in the three prairie provinces, the Liberals won approximately one quarter—10 from Manitoba and two each from Saskatchewan and Alberta. In British Columbia, they won five, as did also the Conservatives, with four for the C.C.F., and the remaining two seats won by Independents.

In contrast, the Progressive Conservatives (to use the new official title) are strong nowhere except in Ontario, which furnishes nearly three-fourths of their parliamentary representation. In each of the remaining regions, they won only five seats except in Quebec, where they elected but one member. Apparently, they were willing to surrender this latter province by default, since they offered only 29 candidates out of a possible 65.

The C.C.F. and Social Credit parties illustrate the extremes of sectionalism. Indeed the Social Credit party can be written off as hardly more than a local phenomenon, since it failed to win anywhere except in Alberta, the province of its origin, and where the party controls the provincial government. There it won its total strength of 13 seats out of the province's 17; but elsewhere it proved somewhat of a political aberration, with a large number of its candidates losing their deposits.

The C.C.F. came out of the election with diminished prestige. The predicted swing to the left did not materialize, although the party did increase its representation from 10 at dissolution to a new total of 28. But the weakness of its position is revealed in the fact that 18 of the delegation, i.e., approximately two-thirds, are from the province of Saskatchewan. Furthermore, the Federation elected only one member east of Manitoba (in Nova Scotia), the balance of its representation coming from the two western provinces of Manitoba and British Columbia. This is sectionalism as serious, if not more so, than the Conservative reliance on Ontario.

It is not easy to explain why both the Conservatives and C.C.F. have to place reliance on a single province for from two-thirds to three-fourths of their representation while the Liberals are in the stronger position of wider distribution, although at the same time dependent upon French Canada. The strong adherence of Quebec to the Liberal cause has an historical background dating from the leadership of Sir Wilfrid Laurier and reënforced by the conscription issue of the first World War, when the Conservatives so antagonized the Quebec electorate that they have never

been forgiven. While the Liberals faced the same issue in the present war, their policy, although unpopular, did not cause serious or permanent defection, notwithstanding that the Bloc Populaire attempted a revolt. But the fact that the Liberals rely upon this reservoir of 60 parliamentary votes causes a great deal of criticism in other parts of Canada, where it is frequently asserted that Quebec is able to "dictate" to the party.

The "zombie" issue is sometimes cited as an illustration in point, although the handling of that question illustrates even better the compromising character of the Administration which makes it able to appeal to widely divergent groups. In the final analysis, however, V-E day played into the Government's hand by quieting a great deal of criticism which the Government brought on itself over the manner in which it handled this question. Realizing the antagonism of Quebec to any system of compulsory service, the Government evaded the issue in the hope that the need would not arise. But the turn of the war demanded a change of policy, and after some fumbling the Liberals reluctantly accepted modified conscription, risking loss of French-Canadian support. Actually, the revolt was not as serious as threatened, and obviously it was of no benefit to either of the two major opposition parties. The socialist doctrines of the C.C.F. held no appeal for the overwhelmingly Catholic voters of the province, while the earlier record and pronouncements of the Conservatives were never allowed to be forgotten. The only alternative was a new party. But the results show, in the election of only two Bloc Populaire members, that Quebec prefers to retain her traditional adherence to the Liberal party. This reservoir of strength, like the so-called "solid south" in American politics, operates as a brake upon the Liberals and results in a middle-of-the-road policy. However, in the essentially compromising character of this policy the Liberals may also point to the source of their strength, which enables them to appeal to all sections. True, it also invites a display of impatience from the West expressed in support of left-wing candidates, as in the case of Saskatchewan and Alberta; and although the Liberals have not entirely lost the West, their leaders must find a great deal of concern in the weakened position of a party that opened its history as the spokesman of the West—albeit that "west" in 1867 was still in the Great Lakes area.

Without Quebec, and with the Liberals strong in the Maritimes (carrying the region by almost three to one in this election), the Conservatives had to make an appeal to the West if they were to offer a serious bid for power. It was with this in mind that the party strategists several years ago summoned a party convention in Winnipeg and drafted Mr. John Bracken as their leader. Mr. Bracken was the Progressive prime minister of Manitoba, and the terms of his acceptance of the Conservative leadership required that the party be rechristened with the rather anomalous title of

Progressive Conservative. In spite of the fact that Mr. Bracken devoted the intervening two years to party organization, subjecting himself to much criticism through failure to assume a seat in Parliament, he failed to sell himself or his program to the country at large and particularly to the West, where the party strategists had expected much. Even in his own province of Manitoba, where during his long term as provincial premier he enjoyed great popularity, he apparently lost his old appeal under the new banner. Only one other Progressive Conservative besides himself won election there, while the Liberals took 10 seats to the C.C.F. five. Mr. Bracken's failure is not new in Conservative annals. Previously, the party had looked to the West for leadership. Two westerners, Meighen and Bennett, preceded Bracken in this rôle. But both went down to defeat, and it was the West that repudiated them. There is a strong suspicion in the Prairies that the party is too closely identified with the financial and industrial leaders of the East, whose policies run counter to the agricultural interests of the West. While the tariff as such ceased to play its former dominant rôle in the campaign, companion economic issues divided East and West. Easier credit and other forms of financial aid loom large in the thinking of the farm voters and help to explain, for instance, why Alberta finds the doctrines of Social Credit attractive, even though a single province alone is unable to implement the theories. Similarly, the C.C.F., when it says that it does not plan to destroy private ownership in land, can appeal to the farmers of Saskatchewan, who in times past have faced lean years of drought and debt and therefore have no reason to fear a socialization which affects forms of wealth characteristic of the urban East. Add to this economic aspect the fact that the immigration into the prairie regions of Canada during the first two decades of this century brought large numbers of middle European peasant stock, and the picture assumes socio-economic significance.

But why does the C.C.F. fail to draw support in other sections? Admittedly, it has increased its parliamentary representation and undoubtedly improved its standing in votes polled in many districts as a result of persistent organizational and educational efforts between elections. This is well illustrated in the provincial parliament of British Columbia, where the C.C.F. had forced Liberals and Progressives into a coalition. The party's weakness in Quebec and in Ontario has been dealt with above—due in one case to the conservative and religious outlook of the French Canadian, and in the other in part to the traditional opposition of economic interests—although in Ontario the C.C.F. waged a vigorous campaign in both the provincial and federal elections and cannot be ignored. Perhaps the failure of the C.C.F. to win in the Maritimes can be explained in part through being out-maneuvered by the Liberals, who have moved cautiously as new champions of a program of state social welfare

at the top of which is placed the new family allowance act. It is interesting to note that this last-mentioned measure was first set in operation in the Maritimes, and also that it is a form of socialization which would not be unpalatable to the French-Canadian with his large family and the resultant benefits accruing. In addition to this act, the Liberals could take just pride in their wider programs of social legislation, and undoubtedly they won support regardless of sectional interests because of this program and what it promised for the future.

The course ahead for each of the parties is obvious, namely, to broaden its appeal to the electorate. The Liberals cannot rest content on their relatively stronger position so long as their hold on the West is tenuous. Conservatives might remind themselves that this is not the first election in which their strength centered in Ontario—in the preceding parliament about two-thirds of their supporters were from within a narrow radius of the city of Toronto. Canadian experience with third parties holds out little promise for the C.C.F., although perhaps the recent success of the Labor party in Great Britain may give the Canadian socialists fresh courage. However, easy comparisons are not always valid, especially when the composition of the people is in sharp contrast. Moreover, Canada anticipates an expanding economy in which the doctrines of free enterprise generally have wider popular appeal. Before another election, the economics of the reconversion period will determine issues and attitudes toward any program of socialism.

But more important than the fortunes of any political party is the question of national unity of which these elections are merely symptomatic. Whenever the provincial prime ministers meet with federal administrators in a dominion-provincial conference, there is a singular lack of statesmanlike viewing of problems from the wider national viewpoint. In spite of the differences that make sectionalism the familiar pattern in domestic affairs, there is, nevertheless, some hope that in the international domain the growing importance of Canada and her expanding trade may provide the requisite unity.

NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

Professor Harold S. Quigley, of the University of Minnesota, has accepted an appointment as special consultant in the Civil Intelligence Section of the Supreme Commander of the Allies in the Pacific, and left for Tokyo during the early part of June. He hopes to visit Korea and China as well as Japan before returning to his academic post in the fall of 1947.

At the University of Chicago, Dr. Don K. Price has been appointed lecturer in political science coincident with his return to "1313" as assistant director of Public Administration Clearing House. During the summer quarter at the University, Professor Robert D. Leigh offered a course on Mass Communications, as well as a seminar on that subject.

Dean William C. Johnstone, of George Washington University, has been granted leave of absence for a year to accept appointment as chief public affairs officer in the American Mission, New Delhi, India. He will have charge of directing the cultural and information program of the State Department for India, with branch offices in Calcutta, Bombay, and Madras.

Dr. George C. S. Benson, formerly of the University of Michigan and later of Northwestern University, has been named director of the newly organized Claremont College Undergraduate School for Men, specially dedicated to training for leadership in business and government.

At Pomona College, Dr. John A. Vieg has been promoted to a full professorship and Dr. Luther J. Lee, Jr., to an assistant professorship. Professor Vieg has been elected to the board of directors of the Southern California chapter of the American Society for Public Administration.

An extensive series of special lectures during the summer session of the University of Michigan, under the general caption of Social Implications of Modern Science, included the following: "The Problem of World Government," Herbert W. Briggs, Cornell University; "Civil Liberties in the Atomic Age," Robert E. Cushman, Cornell University; "The Absolute Weapon—Military versus Social Invention," Bernard Brodie, Yale University; and "Total War and the Preservation of Democracy," Arthur W. Bromage, University of Michigan.

Dr. Howard L. Hamilton, a member of the department of political science at Ohio State University since 1932, returned in December, 1945,

from four years in the Naval Reserve to his position as secretary of the College of Arts and Sciences and instructor in political science. While in the Navy, he was academic director and executive officer of the U. S. Navy Pre-flight School at Chapel Hill, North Carolina, and later served as flag secretary at the naval operating bases in Manila and Subic Bays and still later at the U. S. Naval facilities at Yokosuka, Japan. He was separated from the Navy as a Commander, USNR.

Professor William P. Maddox has resigned from the University of Pennsylvania to accept the position of Chief of the Division of Training Services, Department of State. During the war, Professor Maddox served with the Office of Strategic Services in the European and Mediterranean theatres, attaining the rank of colonel in the United States Army. He was awarded the Legion of Merit with Oak Leaf Cluster.

Dr. A. B. Butts, chancellor of the University of Mississippi since 1935, has been appointed technical Civilian Educational Adviser to the Commanding General, G-3 Section of the Army Ground Forces, effective July 1, 1946, and will be in charge of a program of graduate study in physical and social sciences for officers of the Regular Army placed in various graduate schools by the Army Ground Forces.

Dr. Roy V. Peel, director of the Institute of Politics at Indiana University, served as visiting professor of government at the University of New Mexico during the recent summer session. Mr. Jack E. Holmes of the University of Chicago, has been appointed instructor in government, and Dr. Thomas C. Donnelly, head of the department, has been appointed director of the summer session.

At the University of Michigan, Dr. Lawrence Preuss has been promoted to a full professorship and Dr. Clark F. Norton to an assistant professorship. Dr. James H. Meisel has been reappointed lecturer, and Dr. C. F. Heady, Jr., has been appointed instructor.

At Dartmouth College, Dr. John W. Masland, Jr., formerly of Stanford University, has been appointed professor of government. He will take up his duties in the fall, upon returning from Japan, where he has been serving as a member of the Commission on Political Matters.

Clark University has appointed Dr. Sherman S. Hayden, recently separated from the Navy and formerly assistant to General McCoy of F.P.A., to an assistant professorship of international relations in the department of history and international relations.

Professor Hans W. Weigert, of Carleton College, has taught during the summer in the School for Advanced International Studies at Peter-

borough, N. H. He has accepted the chair of geography and political science at Antioch College, Yellow Springs, Ohio.

Professor Lane W. Lancaster, of the University of Nebraska, taught at Yale University during the recent summer session, giving courses on American government and the principles of political science.

At Purdue University, Dr. J. William Robinson has been advanced to a full professorship and Miss Kathryn D. Frederick, of the University of Wisconsin and with the War Production Board in 1942–44, has accepted appointment as instructor.

Dr. George L. Millikan, lately a Lieutenant Commander in the U. S. Naval Reserve on leave from the University of Delaware, and Mr. James K. Owen, now finishing his requirements for the doctorate at Princeton University, have been appointed assistant professors at Louisiana State University.

Miss Louise Overacker, of Wellesley College, sailed in June for Australia, where she will be occupied during the coming year with a study of the party system.

Professor John E. Briggs, of the State University of Iowa, received the honorary degree of doctor of laws at Morningside College in June. Dr. Briggs received his bachelor's degree at Morningside in 1913.

Professor George A. Shipman, of Duke University, on leave for service with the Bureau of the Budget since 1943, has been appointed to a full professorship at the University of Washington.

The University of Minnesota announces the following new appointments in political science, to take effect this fall: Dr. Willmore Kendall as associate professor, and Dr. Werner Levi and Mr. Herbert McClosky as assistant professors.

Professor Henry P. Jordan, of New York University, has served this summer as visiting professor at the Newark Colleges of Rutgers University, where he is teaching courses in European history and American government. He will also offer his course on the governments and politics of Latin America in the second summer term at New York University, and deliver a lecture on the political situation in Latin America to the Summer Institute for Social Progress at Wellesley College.

Professor Harold M. Vinacke, of the University of Cincinnati, is giving courses on the Far East and Japan at the University of Wyoming during the current summer session.

At the University of Kansas, Dr. W. Rolland Maddox has returned to

teaching after leave of absence since June, 1942, for service as research associate in the research department of the Kansas Legislative Council. He will act also as research associate in the University's recently revived Bureau of Government Research.

Professor Quincy Wright, of the University of Chicago, gave the commencement address at Berea College in June.

At the University of Pennsylvania, Lieutenant Commander Donald Harter, formerly at the University of Missouri, has been appointed assistant professor, and Mr. Philip C. Pendleton, a member of the Philadelphia bar, lecturer.

Drs. Carl J. Schneider and Richard Reath, who received their degrees at the University of Wisconsin shortly before entering military service, have been appointed to the teaching staffs of the University of New Hampshire and the University of Idaho, respectively.

At Stanford University, Commander Robert H. Connery, of the Office of the Secretary of the Navy, has been appointed acting associate professor, and Dr. Arnaud B. Leavelle, Jr., of Swarthmore College, acting assistant professor. Commander Connery will specialize in public administration and Professor Leavelle will offer courses in theory.

Mr. Gayle K. Lawrence, formerly instructor at the University of Pennsylvania, has accepted a similar position at Temple University.

At the University of Tennessee, Dr. Wallace Mendelson, who has taught at the Universities of Missouri and Illinois, has been appointed associate professor.

Dr. Robert A. Dahl, formerly with the U. S. Department of Agriculture, War Production Board, and U. S. Army, has been appointed to an instructorship at Yale University.

Mr. Frank Grace, who has been an assistant at Louisiana State University, served as visiting instructor at the University of Mississippi during the recent summer session.

Professor W. Leon Godshall has resumed teaching at Lehigh University as head of the newly created department of international relations. During the past year, he was engaged in lecturing before Rotary clubs on international topics.

Professor Ray F. Harvey has resigned his position as chief of research and planning, New York State Division of Veterans Affairs, as of February 1, 1946, to return to New York University as assistant to the Provost in charge of research and planning for the University.

At New York University, Professor Morley Ayearst has resigned as assistant professor of government to accept the directorship of the Westchester Center of New York University, opened on June 17.

Dr. William H. Edwards, of State Teachers College, Brockport, New York, has obtained a leave of absence to permit him to serve for a year as exchange professor of politics at the University of Madras.

Dr. Orba F. Traylor, of Kenyon College, has accepted a professorship at the University of Denver, where he will conduct courses in public finance and administration.

After more than three years of active duty with the U. S. Naval Reserve and a period of inactive duty, Dr. Winston W. Crouch has returned to the department of political science at U. C. L. A. and has been promoted to the rank of associate professor. His latest naval rank was that of Lieutenant Commander, and his final assignment was the preparation of an administrative history of the U. S. Naval Forces in Europe during the recent war.

At New York University, Dr. Denis S. Philipps has resigned as instructor in government to become executive secretary of the Program for Training Personnel Specialists in the University's Division of General Education, and Mrs. Elizabeth Evers has been appointed instructor for the year 1946–47.

Dr. Leon Weaver, of the Central Secretariat, Department of State, offered courses during the summer at George Washington University.

At the University of Iowa, the former residence of Professor Benjamin F. Shambaugh has been willed to the University by Mrs. Shambaugh and in time will become the "Shambaugh Guest House" of the University.

Dr. William Willoughby, recently employed in the Department of State, has accepted an associate professorship of history and government at St. Lawrence University.

Professor Joseph S. Roucek, of Hofstra College, was a visiting member of the summer school faculty of San Francisco State College during the recent summer session.

Dr. Elmer Plischke, who served in the Navy military government headquarters in England and later on loan to the Political Division of the U. S. Group, Control Council for Germany, has been appointed to an assistant professorship at DePauw University.

Dr. Franklin L. Burdette has resigned his position at Butler University to accept an associate professorship at the University of Maryland. He

will retain his connection with the National Foundation for Education at Indianapolis in an editorial capacity.

Released from the Navy last fall to join the staff of the U. S. Strategic Bombing Survey (Pacific) as deputy chief of the Morale Division, Dr. David B. Truman later returned with the group to participate in preparation of the reports, and during the coming year will serve as visiting lecturer in government at Harvard University.

After two years of service in the Division of International Organization Affairs, Department of State, Dr. Henry Reiff has returned to St. Lawrence University as head of the department of history and government.

Professor Lashley G. Harvey, lately of the University of New Hampshire, has accepted a position at Boston University, where he will draft plans for a bureau of governmental research.

Dr. Lynwood M. Holland, recently assistant professor at the University of Arizona, has occupied a similar post at Emory University since June.

Dr. Leo C. Riethmayer, formerly of Texas Technological College, has been appointed associate professor at the University of Colorado and will be on the staff of the University's bureau of state and community service.

Dr. Richard F. Behrendt has been promoted from associate professor to professor of international affairs at Colgate University, and is in charge of courses and seminars on government and politics, sociology, and economics of Latin America, in addition to a new course, "Problems and Elements of World Order." Before joining the Colgate faculty in 1945, Dr. Behrendt was director of the Graduate Institute of Social and Economic Research at the Inter-American University in Panama and consultant to the government of Panama.

Dr. Benjamin E. Lippincott, who is completing his tour of service with the Historical Office of the Army Air Forces, has been promoted to a full professorship at the University of Minnesota, and will return to the University in the fall. Associate Professor Earl Latham, who has been with the U. S. Bureau of the Budget during the war, Associate Professor Evron M. Kirkpatrick, who has been serving with O.S.S., and the State Department during the past year, and Assistant Professor Charles H. McLaughlin, who served with the Army Air Forces during the war and has recently been stationed at Columbia University, will also return to Minnesota this fall.

At Miami University, Professor Burton L. French retired from his position at the close of the past academic year, and Professor Willard C.

Matthias resigned the post from which he had been on leave since entering military service in 1943. Professor Matthias has taken a civilian position in Washington and continues the duties with which he was engaged while holding a first lieutenant's commission. The department of government at Miami has added, as an associate professor, Dr. Paul M. Zeis, formerly of Akron University, more recently chief of the shipping section, Transportation Division, U. S. Department of Commerce; and as assistant professors, Louis H. Douglas, acting dean of Hastings College, and Warren Cunningham, who holds a doctor of jurisprudence degree from the University of California and is completing work for the degree of doctor of philosophy at the University of Washington. Dr. W. F. Cottrell has been promoted to a full professorship.

On June 14, the Regents of the University of Utah voted to establish an Institute of Government at the University and named Dr. G. Homer Durham, associate professor of political science, as the new organization's first director. The Institute will coördinate curricula in government and politics in two ways: first, by including some of the courses in the Schools of Law, Business, and Engineering in the liberal arts training afforded political science majors in the School of Arts and Sciences; second, by extending, for selected students, the existing specialized curricula in the professional schools of the University to include broad training in political problems. The Institute also envisages the development of an in-service training program for public officials in the Salt Lake City area, together with a modest program of governmental research and consultant services.

The department of political science at the University of Minnesota has received financial support for a five-year program of studies on the intergovernmental relations of the state of Minnesota. The studies will be directed by Professor William Anderson, who will be assisted by Mr. Edward W. Weidner. The initial studies will probably be centered around particular major functions of government, such as public health, social security, and the conservation of resources. Each study will be designed to bring out the relations of Minnesota with the national government, with other states, and with local governments inside Minnesota, in connection with the function being studied. Following the completion of several functional studies, a number of cross-section studies will be undertaken to discover common elements in the various functional activities, with respect to problems of organization, financing, personnel, and procedures. It is hoped that these studies may serve to throw some light, not only upon the problems of American federalism and intergovernmental relations, but also upon the possible wider applications of the principles of federal government. Suggestions and inquiries concerning the program are invited.

Harvard University has announced a program in International and Regional Studies, embracing a general curriculum in international affairs and separate regional programs for Soviet Russia and for China and Peripheral Areas. Instruction in the general program and in the regional program for China will begin this September; the curriculum for Soviet Russia will be introduced as soon as practicable. The International Affairs Program will lead to the master's degree. Although designed primarily for those with government careers in mind, it will also meet the needs of persons interested in public or private international organizations, journalism, and commerce. The program is open to undergraduates only in exceptional cases.

The Institute for Human Adjustment at the University of Michigan announces the establishment of a Social Science Research Project in conjunction with the Metropolitan Community Seminar and the Flint, Michigan, metropolitan community. The Project will spend $20,000 a year on research in metropolitan problems in the Flint area. Its program involves a permanent full-time research staff and headquarters in the area and the creation of six or seven $1,000 fellowships, with additional allotments for travel. The work of both the resident research staff and the graduate students will be under the supervision of the Metropolitan Community Seminar, an inter-departmental graduate research seminar the faculty of which includes representatives from architecture, economics, geography, political science, public administration, and sociology. Further information may be obtained from Dr. A. H. Hawley, chairman of the Metropolitan Community Seminar and of the Social Science Research Project, Haven Hall, University of Michigan, Ann Arbor. Applications for fellowships should be addressed to the Dean, Horace H. Rackham School of Graduate Studies.

Dr. Walter F. Dodd, president of the American Political Science Association, announces the following committee appointments in addition to the list published in the June issue of the REVIEW:

Committee on International Cultural Relations: Pitman B. Potter (American University), *chairman;* Clarence A. Berdahl (University of Illinois); Clyde Eagleton (New York University); Malbone W. Graham (University of California at Los Angeles); Alice M. Holden (Smith College); Grayson L. Kirk (Columbia University); John Brown Mason (Oberlin College); Walter R. Sharp (College of the City of New York); Ellery C. Stowell (American University); Quincy Wright (University of Chicago).

Committee on Judicial Organization and Administration: Arthur T. Vanderbilt (Dean, New York University Law School), *chairman;*

Francis R. Aumann (Ohio State University); Edwin Borchard (Yale University); Henry P. Chandler (Director, Administrative Office of United States Courts), John Dickinson (University of Pennsylvania); J. A. C. Grant (University of California at Los Angeles); Judge Lawrence M. Hyde (Supreme Court of Missouri, Jefferson City); Charles H. McIlwain (Harvard University); Dayton D. McKean (Dartmouth College); Rodney L. Mott (Colgate University); Judge John J. Parker (U. S. Circuit Court of Appeals, Fourth Circuit); Roscoe Pound (Harvard University); Judge George Rossman (Supreme Court of Oregon, Salem).

Committee on Local Arrangements for Forty-second Annual Meeting: Earl L. Shoup (Western Reserve University), *chairman;* Karl A. Bosworth (Western Reserve University); Leyton E. Carter (Director, The Cleveland Foundation); Robert W. Chamberlin (Director, Citizens' League of Cleveland); Earl W. Crecraft (Dean, Kent State University); P. T. Fenn, Jr. (Oberlin College); Mary Z. Johnson (College of Wooster); Mrs. Edward J. Kenealy (President, Cuyahoga County Council of the League of Women Voters); Roy V. Sherman (University of Akron); Shepherd L. Witman (Director, Cleveland Council on World Affairs).

Committee on the Nomination of Officers: Denna F. Fleming (Vanderbilt University), *chairman;* John E. Briggs (State University of Iowa); Everett S. Brown (University of Michigan); Robert E. Cushman (Cornell University); Edward Mead Earle (Princeton University).

Committee on Program: J. Alton Burdine (University of Texas), *chairman;* Cullen B. Gosnell (Emory University); W. Brooke Graves (Bryn Mawr College); J. Donald Kingsley (Antioch College); C. M. Kneier (University of Illinois); Arthur W. Macmahon (Columbia University); Benjamin F. Wright, Jr. (Harvard University).

John Russell (Bureau of the Budget) has been appointed to serve on the Committee on Undergraduate Instruction.

Dr. George B. Galloway, chairman of the Committee on American Legislatures, has appointed a subcommittee on state legislatures consisting of J. F. Isakoff (Springfield, Ill.), *chairman;* Donald Axelrod (Albany, N. Y.), Arthur N. Holcombe (Harvard University), Belle Zeller (Brooklyn College).

DOCTORAL DISSERTATIONS IN POLITICAL SCIENCE

IN PREPARATION AT AMERICAN UNIVERSITIES[1]

COMPILED BY DAVID FELLMAN[2]
University of Nebraska

POLITICAL PHILOSOPHY AND PSYCHOLOGY

William M. Barr; Litt.B., Rutgers, 1928; A.M., Columbia, 1936. The Philosophy of Woodrow Wilson. *Columbia.*

Samuel I. Clark; A.B., Chicago, 1943. The Political Theory of Don Luigi Sturzo. *Chicago.*

[1] Similar lists have been printed in the REVIEW as follows: V, 456 (1911); VI, 464 (1912); VII, 689 (1913); VIII, 488 (1914); XIV, 155 (1920); XVI, 497 (1922); XIX, 171 (1925); XX, 660 (1926); XXI, 645 (1927); XXII, 736 (1928); XXIII, 795 (1929), XXIV, 799 (1930); XXV, 798 (1931); XXVI, 769 (1932); XXVII, 680 (1933); XXVIII, 766 (1934); XXIX, 713 (1935); XXX, 811 (1936); XXXI, 772 (1937); XXXII, 796 (1938); XXXIII, 732 (1939); XXXIV, 767 (1940); XXXV, 752 (1941); XXXVI, 734 (1942); XXXVII, 706 (1943); XXXVIII, 766 (1944); XXXIX, 779 (1945).

Items which appeared in the August, 1945, list are in general classified under the same headings in the present list, and new items have been assimilated to the 1945 classification as far as possible. In cases where classification of an item has been suggested by the institution concerned, the suggestion has been followed. Each item is listed under one classification only. Names starred are merely carried over from the 1945 list, no more recent data having been received.

The lists printed in the REVIEW are based on information from departments giving graduate instruction in political science. Often dissertations are in progress in departments of economics, history, sociology, etc., which overlap or supplement dissertations in preparation in political science. Attention is called especially to the following lists: "Check List of Current Researches in Public Administration Reported to the Committee on Public Administration, Social Science Research Council" (mimeographed, most recent edition, January, 1943); "Doctoral Dissertations in Political Economy in Progress in American Colleges and Universities," in the *American Economic Review;* "List of Doctoral Dissertations in History Now in Progress," formerly published by the Division of Historical Research, Carnegie Institution of Washington, but since the 1938 issue as a Supplement to the *American Historical Review;* and "Higher Degrees in Sociology," in the *American Journal of Sociology.* Usually one list is published each year. These are in addition to the "List of American Doctoral Dissertations Printed in 1938," the most recent of an annual series published by the Library of Congress; and Edward A. Henry's "Doctoral Dissertations Accepted by American Universities, 1944–1945," the twelfth of a series beginning in 1933–34, compiled for the Association of Research Libraries. Consult, for other lists, T. R. Palfrey and H. E. Coleman, Jr., "Guide to Bibliographies of Theses, United States and Canada" (Chicago, American Library Association, 2nd ed., 1940).

[2] The compiler gratefully acknowledges the aid of Miss Erna Flader, secretary to the Department of Political Science, University of Wisconsin, in the preparation of the manuscript.

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Charles Sebastian La Cugna; A.B., Manhattan College, 1937; A.M., Fordham, 1944. The Political Thought of Don Luigi Sturzo. *Notre Dame.*

Richard Eugene Curl; A.B., Ohio State, 1939; A.M., *ibid.*, 1940. The Impact of War on Government Publicity. *Princeton.*

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Samuel Fox; Ph.B., Chicago, 1924. Majority Rule and Minority Representation as Provided by the Electoral System of the Limited Vote. *Notre Dame.*

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William Broderick Pendergast; A.B., Notre Dame, 1937; A.M., *ibid.*, 1938; l[ière] Licence en Sciences Politiques et Sociales, Louvain (Belgium), 1939. American Ideas on the Limits of the Authority of Government. *Chicago.*

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Paul Beckett; A.B., Monmouth College, 1935; A.M., Illinois, 1938. Judicial Review of Statutes in California, 1880–1910. *U.C.L.A.*

Ross C. Beiler; A.B., Allegheny College, 1937; A.M., Iowa, 1940. The Commerce Clause and State Regulation, 1888–1910. *Iowa.*

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James Kimbrough Owen; A.B., Louisiana State, 1937. The Colonial Parish and Local Self-Government in Virginia. *Princeton.*

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A. O. Porter; A.B., Harvard, 1920; A.M., *ibid.*, 1922. The Development of County Government in Virginia. *Columbia.*

Clifford Rader; A.B., Eastern State Teachers College (Kentucky), 1934; A.M., Kentucky, 1937. Problems of Kentucky County Government. *Kentucky.*

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Kuo Ying Tsai; A.B., Yenching University, Peiping, China, 1935; A.M., Princeton, 1937. Alcoholic Beverage Regulation in New Jersey. *Princeton.*

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Harold Wesley Ward; A.M., Louisiana State. The Virginia Alcoholic Beverage Control Board. *Virginia.*

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Robert S. Avery; A.B., Baldwin-Wallace College, 1939; A.M., Northwestern, 1940. The Administration of the Tennessee Valley Authority Personnel Program. *Northwestern.*

Dana Mills Barbour; A.B., Washington, 1929; A.M., *ibid.*, 1930. Centralization in Federal Procurement. *Stanford.*

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Frederick T. Burrill; A.B., Southern California, 1937; M.S.P.A., *ibid.*, 1940. An Experimental Study of the Interrelationships of the Supervisory Hierarchy. *Southern California.*

Howard A. Calkins; A.B., Ohio Wesleyan, 1927; A.M., Wisconsin, 1928. A Survey of Personnel Practices in Selected Texas Administrative Agencies. *Wisconsin.*

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J. Murray Edelman; A.B., Bucknell, 1941; A.M., Chicago, 1942. The Licensing Activities of the Federal Communications Commission. *Illinois.*

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Guy Fox; A.B., Texas Christian, 1939; A.M., Southern Methodist, 1940. Regulation of Banking by the Comptroller of the Currency. *Texas.*

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Lowell H. Hattery; A.B., Ohio University, 1936. Federal Government Management of Social Science Research. *American.*

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BOOK REVIEWS AND NOTICES

The Absolute Weapon; Atomic Power and World Order. By Frederick S. Dunn, Bernard Brodie, Arnold Wolfers, Percy E. Corbett, and William T. R. Fox. Edited by Bernard Brodie. (New York: Harcourt, Brace and Company. 1946. Pp. 214. $2.00.)

This volume is the best study yet made of the impact of atomic weapons upon war and international politics. Analytical, restrained, and judicial, it offers no easy panaceas or categorical imperatives. Although it will disappoint enthusiasts for world government, it is on the whole optimistic concerning the feasibility of international controls of atomic energy by measures short of immediate and universal federalism. It is highly commended to students of politics and to the physical scientists whose interest in international affairs has been stirred so dramatically during the past year.

Mr. Dunn's opening chapter is a brilliant essay on the rôle which treaties may play in restricting or abolishing the use of atomic weapons. The grave danger, he says, is that we shall put too much faith—or, at the other extreme, no faith at all—in the mere act of treaty-making, and that we shall neglect the truth that "treaties are tools which will perform well under certain conditions and badly under others." The important consideration, therefore, is that a favorable set of conditions "be coaxed into existence"—that is, that political rather than technical problems be given the higher priority in dealing with the newer weapons of war. Written with erudition and charm, this statement of "The Common Problem" rates high among Mr. Dunn's published works.

Mr. Bernard Brodie—whose editorial hand has given the volume unity and coherence—contributes two chapters, one on the atomic bomb as a weapon and the other on the impact of the bomb on the conduct of war and the formulation of military policy. As usual, he writes with technical competence and a good deal of political insight. He makes some sweeping generalizations which will not necessarily be accepted, and in dealing with future tactics and strategy he is admittedly engaged in hypothetical reasoning. But Mr. Brodie commands respect because of his rich knowledge of military technology and military thought. It is therefore of interest that, in general, he confirms the scientists as regards the destructive possibilities of the bomb, the virtual impossibility of devising a defense, and the difficulty of preserving the "secret" now reposing in the breast of General Groves. Mr. Brodie deals particularly effectively with the military aphorism that, given time, a counter will always be found to a new weapon, however novel.

In a compact, closely reasoned, and well-written chapter, Mr. Wolfers discusses the rôle of atomic weapons in Soviet-American relations. He

characterizes as political naïveté the idea that the atomic bomb is a major factor in the impasse at which we seem to have arrived in our dealings with the Soviet Union. Russian suspicions of the United States and Great Britain, as well as the political and ideological differences connected with them, antedate the atomic bomb by at least a quarter-century and would persist today if the bomb had never been invented. It is not possible, therefore, to isolate the bomb from other phases of Russian-American affairs as one would isolate and treat a virulent bacillus. It must be dealt with as part of a larger problem as well as a problem in itself. Our "defenses" against an atomic war with the U.S.S.R. are threefold: first, political negotiations which will reduce the prevailing tension; second, technical arrangements to restrict or prohibit the use of atomic weapons; third, military defenses. Mr. Wolfers is under no illusions that any of these defenses will be easily or successfully constructed, but like the rest of us he feels that we must try everything short of futile appeasement.

Messrs. Corbett and Fox address themselves to the complicated question of controls. And they succeed very well in giving a clear picture of the possibilities and limitations of any system of restraint or prohibition, whether within or without the framework of the United Nations. Mr. Corbett expresses a restrained optimism that the existing Charter, including the veto in the Council, will permit the necessary controls to be imposed. Mr. Fox commends the report of the Board of Consultants of the Department of State as providing the right technical, psychological, and political approaches to the problem.

Basically, however, the authors are in agreement that the most powerful restraint on the use of atomic weapons will be the fear of reprisals, the consequences of which may be suicidal. "Nothing could be less tempting to a government," says Mr. Wolfers, "than a war of mutual extermination ending in a stalemate." But Mr. Wolfers adds an important qualification—provided a government "were in possession of its senses." And this qualification may be the crux of the matter. For if politics (domestic as well as foreign) were governed by rational considerations, this would be a happier world and there would be a true science of politics.

EDWARD MEAD EARLE.

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Essays on Government. By ERNEST BARKER. (Oxford: The Clarendon Press. 1945. Pp. vii. 269. $4.25.)

Professor Barker, author of earlier works on Greek political philosophy and numerous later publications on modern political ideas on government (mainly in Great Britain), has here brought together a group of shorter writings, prepared at different times and on different but related topics, since 1931.

Three of these essays (Nos. 5, 6, and 7) deal with political ideas in England during the second half of the eighteenth century: "Blackstone on the British Constitution," "Burke and His Bristol Constituency," and "Burke on the French Revolution." The last essay, on "The Community and the Church," was prepared for an international conference on Church, Community, and State, held at Oxford in the summer of 1937.

The first four essays, written on different occasions since the spring of 1941, discuss some phases of modern government. The first deals with the continuing but changing position of the British monarchy; the second, with British statesmen from Cromwell to Churchill; the third, with parliamentary government, mainly in Great Britain and France; the fourth, with the government of the Third French Republic.

The essays are limited in the main to Great Britain and France, with occasional references to the British Commonwealth and Empire, the United States of America, and (in the essay on parliamentary government) to Spain, Sweden, Switzerland, and the "great progressive state . . . the Russian Union of Soviet Socialist Republics." They are marked by well-reasoned analysis, tolerance, and lack of dogmatism.

Professor Barker acquired his early political views from his father—a Liberal workingman, inclined to republicanism, in the days of Queen Victoria. He has modified his opinion of monarchy, with the changes in the attitude of the British kings of the present century, as an institution adapted to the British people. He accepts the trends toward democracy, working through Parliament, and the emergence of a new type of statesmen in the Labor party from the working class, without committing himself on the trends toward socialism in the economic policy of that party.

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Government Against the People. BY ASHER BRYNES. (New York: Dodd, Mead and Company. 1946. Pp. 265. $3.00.)

It is seldom that one finds a book so completely at variance with the expressed intention of the author (not to mention the claims of the publishers) as is the volume by Asher Brynes, called *Government Against the People*. The author's first statement, which occurs in a "note on footnotes," is that the book is intended for the general reader. Since its chief contents are two long and very dull essays seeking to interpret certain historical developments in Russia and England respectively, the style is ponderous despite brilliant sentences, and the argument loose and quite unrelated to much of the material intended to support it, the general reader can hardly be expected to derive much nourishment from this meager feast of reason. The publishers describe the book as "basically a physical and concrete approach to the fundamentals of politics," and as

"a lucid and intelligent explanation of why the Russians are acting as they are today." The publishers are mistaken on both counts.

The central idea of the book is that in the constant struggle of a political community to achieve a satisfactory balance between order and justice, with order stressed in periods of national danger, and justice and equity stressed when such danger passes, "the ordinary police serve as guinea pigs. They indicate the normal range of adjustment. We know what has happened when, on the one hand, they disappear, or on the other hand turn into soldiers (p. 16) . . . . When a nation's social and economic status has advanced beyond the net worth of the resources under its political control, the effort to achieve an equilibrium begins with a gradual militarization of the police. . . . War begins at home. The time to stop it is when any nation's police force has lost its civil character and is being used to prepare for a subsequent mobilization" (p. 21).

The foregoing passage will serve as well as another to show the chief faults of the book. First, the author's reasonable mistrust of a police force which rules rather than serves society is exaggerated into a basic principle of historical interpretation. Throughout the whole study, other factors are slighted in favor of this central idea. Second, this preoccupation leads to inconsistencies and contradictions in the argument. Thus, if the cause of war is an imbalance between status and resources, war can no more be stopped by preventing the militarization of the police force than the ravages of smallpox can be stopped by powdering the pustules. Third, specious remedies are advanced with facility. As the book progresses, this fault becomes serious, and culminates in a formula for avoiding war: "full economic coöperation with each community that maintains its peace by an international standard of police" (p. 262). What of international economic imbalances? What of the geographical factors which Mr. Brynes stresses elsewhere?

It should be added that the treatment of Europe and European countries is mistaken in nearly every instance. For example, it would be hard to defend the following passage from either the historical or the political angle: " . . . the total wars of the French began at the end of the eighteenth century under Napoleon. The total wars of modern Germany began in the decade 1860–1870. . . . The former took its departure from an age in which politics was still a branch of philosophy, and its chief emphasis has ever since been directed to the achievement of a symmetrical uniformity, a logical convergence of arrangement in French administrative structures. The Germans, who became a nation in the Age of Steam, have been dominated by a more literal sense of mechanism; they have emphasized the systematic rationalization of administrative technology" (p. 231).

Enough has been said of the shortcomings of this very unsound histori-

cal-political study. It is only fair to show the other side of the picture. The author's mind is vigorous. He understands the importance of a synthetic view of history and of social and political institutions. If he can learn to be sure of his facts, to allow these facts to suggest and test the synthesis, and to lighten his style as a whole while refraining from brilliant but baseless expressions of the thing as he feels it, he may yet write a book that will be worth reading.

MIRIAM E. OATMAN.

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The Roots of American Loyalty. By MERLE CURTI. (New York: Columbia University Press. 1946. Pp. x, 267. $3.00.)

A history of patriotism presents just about as tortuous a problem as anything in intellectual history. What concepts of patriotism have really mattered? What types of materials are most pertinent to their study? What matrix of general thought will produce the most socially useful analysis of the materials?

The central usefulness of Mr. Curti's book comes from his full realization of the seriousness of these problems and his refusal to try to solve them definitively in this first critical history of American patriotism. The whole book is frankly exploratory. Its approach is Veblenian, but Veblen's emphasis on patriotism as solidarity in pursuit of prestige is not permitted to twist patriotisms which seem to burst through that category. The allocation of space is deliberately made disproportionate in favor of the period before 1876, partly because Mr. Curti believes the formative period most important, partly because it offers more previous research and a chance for more perspective. Everything from blowzy Fourth-of-July orations to profound critiques is used as material, with no reluctance to reveal either the methods employed to assess the relative importance of documents or the limitations of those methods. The organization of the book, though it stays within a rough chronological framework, keeps the structure and tone of a series of experimental essays along topical lines. *The Roots of American Loyalty* is by far the most freely speculative of any of Mr. Curti's major writings, and readers will be delighted by the supple wisdom he lavishes on patriots whether they are Jefferson or jingoes.

The chronological-topical arrangement provides a treatment of a disparate colonialism gathering around the Constitution into a national loyalty; of feelings of "time" and "place" which Hamiltonianism and the technological conquest of distance helped attach to the nation; of the processes of fitting newcomers into the patriotic pattern; of the methods of nurturing loyalty and its economics; of the crisscross of conceptions which followed the Civil War. It is in the immediate post-Civil War decades that the book finds its major dividing line. Then a conception

of integral patriotism grew strong and fought for the mind of America with an older patriotism which looked upon the Union as a legal creation of contractual rights and obligations.

So sweeping a treatment of so unexplored a field inevitably provokes dissents, and this reviewer is most concerned with Mr. Curti's handling of his major dividing line. Following the liberal tradition in American historiography, he associates integral nationalism with reaction at home and jingoism abroad. The older tradition of patriotism was "liberal" and "humane"; integral patriotism "easily ran into chauvinism." Certainly integral patriotism did give valuable support to imperialism, militarism, and nativism. Yet it is equally true that it gave valuable support to the late nineteenth-century progressivism which Mr. Curti rightly makes a continuation of the humane tradition in America. To cite but one example: Herbert Croly was a complete integralist, but that in no way hindered his *Promise of American Life* and his writings as first editor of the *New Republic* from proving important catalytics of American progressivism. If integral nationalism can easily run to reaction, it also can and has run to demands for national action to bring about national social reforms.

That is the kind of book *The Roots of American Loyalty* is—a dissertation could be written in dissent from, or in amplification of, any of its suggestive pages. One hopes that the dissertations will come, and come before the Atomic Age is much older. For, as Mr. Curti remarks with tremendous understatement, efforts to understand "the sources and nature of American patriotism may be more than an academic exercise."

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Princeton University.

The Economic Mind in American Civilization, 1606–1865. By JOSEPH DORFMAN. (New York: The Viking Press. 1946. Two volumes. Pp. xii, 499, xxxi; vii, 503–987, xlv. $7.50.)

Mr. Dorfman's two volumes—which will be completed with two succeeding volumes for the period since the Civil War—are a major contribution to the interpretation of American thought. *The Economic Mind* recalls at once the works of the Beards and Parrington in its contour and sweep. What they essayed in the fields of cultural and political history (although the Beards wrote also of our economy) is here brought into more precise and meticulous focus in the area of economic ideas.

It is impossible in a brief review to give more than a general view of the rich collection of original materials on the ecology of our native economic thought brought together by Mr. Dorfman. The two and a half centuries he has portrayed are divided into three major periods: Colonial America; from Independence to Jackson; from Jackson to the Civil War. For each, he has provided an extraordinarily thorough and revealing summary and

appraisal of the literature of economic controversy. He has brought to light many hitherto little recognized writers of tractate and treatise. He has also reëxamined the economic writings of some of the major authors usually associated with our political or social, rather than with our economic, doctrines. In addition, he has offered some interesting and frequently illuminating analyses of the economic conditions in the periods with which he deals—conditions affecting national as well as regional differences of economic outlook. In short, the two volumes provide us for the first time with a comprehensive view and review of the origins and character of our indigenous economic thought and of the men who framed it.

These volumes have substantial importance in themselves; they are a major contribution to American self-appraisal. They have particular relevance for political scientists in that they emphasize the relations, recurrent since Jamestown and the Mayflower, between governmental policies and the economy. We are too prone today to think that our own time, in which the strands of governmental action and economic activity are so closely intertwined, is almost the first time in which a state economy has been advocated or developed in our history. It is, no doubt, true that we are living in a period in which the relations between government and economy are more pervasive and inclusive than ever before. It is certainly also true that arguments, pro and con, on governmental intervention in economic affairs have been a recurrent factor in both thought and action. The great debates on specific measures during the colonial period and since Hamilton's *Report on Manufactures* are, of course, well known. Mr. Dorfman has succeeded in bringing to light much literature which had been ignored or forgotten revolving around these debates. He has also underlined a number of lesser known controversies on the relations of government and the economy in the context of the periods which he reviews.

His essay is of special relevance to our own time; through the refraction of past controversies, he illuminates the issues which we face today. The rootage of ideas about problems which are currently the subject of widespread debate is here traced deep in the native soil of our own past experience and the economic literature it engendered. *The Economic Mind in American Civilization* provides political scientists for the first time with a thoroughgoing review of economic thought in many of the areas with which they are most concerned in contemporary governmental organization and policy.

More than fifty-five pages of bibliography and twenty-five pages of index attest the range and quality of Mr. Dorfman's scholarship. They will long remain a major source for further exploration. The only major criticism of this unusually scholarly work has to do with the nature of its

presentation. Although there are several brilliant and incisive summary chapters, in which Mr. Dorfman appraises the context of the ideas he presents from the sources, the very wealth of materials he includes sometimes obstructs the flow of the narrative, even of the record itself. There is less synthesis by the author than one would wish to have; it would have been interesting to have more of the author's own estimates of the value and validity of the ideas he traces. This reticence does not detract from the substantial debt we owe Mr. Dorfman for his definitive study; its completion will be eagerly awaited.

PHILLIPS BRADLEY.

Cornell University.

Financing American Prosperity; A Symposium of Economists. EDITED BY BENJAMIN M. ANDERSON ET AL. (New York: The Twentieth Century Fund. 1945. Pp. xi, 508. $3.00.)

The publication of symposia is one of the fashions of our times. Out of the many such ventures that have come to this reviewer's attention in the past two or three years, none strikes him as more important than the volume now being considered. The distinction of its contributors, the fine work performed by its editors, the importance of the subject-matter—all add to the value of the volume.

Planned while the war was still being fought and published soon after V-J Day, this book is concerned with policies to be adopted by the government and with those to be developed by business and labor, all of them designed to meet the perplexing problem of making successfully the transition from the war economy to a prosperous and stable economy of peace. The title of the book gives a somewhat misleading view of its rich contents, for, whereas problems of financial organization, of monetary, banking, and budgetary policies, occupy the center of the stage, there is hardly an important matter relating to the functioning of our economy that is not considered by one or another of the writers. Nor is it at all the view of most of the contributors that the financial "maintenance of total expenditures" is a sufficient condition for the maintenance of stable prosperity.

The scope of the volume is illustrated by the titles of its constituent essays: "The Road Back to Full Employment" (Anderson), "Financing High-Level Employment" (Clark), "Economic Expansion Through Competitive Markets" (Ellis), "Stability and Expansion" (Hansen), "Public Policies and Postwar Employment" (Slichter), "Free Enterprise and Full Employment" (Williams).

Opinions of the contributors differ on many important matters, such as the scope and nature of public policy, the reliance that can be placed upon market mechanisms, specific measures in the field of interest rates, fiscal

policy, wage policy, etc. On one extreme we find Professor B. M. Anderson, whose point of view is epitomized in two of his subtitles: "Our Last Natural Recovery to Full Employment—1921–23" and "When Governments Play God." On the other extreme, one could place Professor Alvin H. Hansen, with his considerable reliance upon the efficacy of government planning in the fiscal sphere. Hansen, incidentally, expresses the viewpoint of those who synchronize the "great depression" of 1929 and following years with a "revolution" in economic thought. He writes: "The great depression . . . has shattered the old patterns of man's thinking in a thousand ways, and particularly in respect to economic institutions and economic policy. . . . History will, I think, show that the economic upheaval of the great depression constitutes a 'great divide' in economic thinking and economic policy. We have entered upon new territory. . . ."

It is far beyond the scope of a necessarily short review even to attempt an analysis and discussion of the various doctrines, points of view, and recommendations which fill this symposium. The editors, very wisely, decided upon a chapter devoted to a "Summary and Analysis" of the six principal essays, winding up in a "Catalogue of Recommendations." This concluding essay, the work of Professor Fritz Machlup, is a most painstaking catalogue of the points of view advanced by one or another of the six contributors upon every subject that came into their field of vision. The catalogue is very well reasoned and superbly organized. Unfortunately, the very length of this concluding essay (over one hundred pages), makes it far less serviceable to the general reader than a shorter and more incisive analysis might have been, whereas the technical reader who is familiar with the general philosophy and the earlier writings of the six principal contributors may want to draw his own comparisons from the main body of the book. Served with a wonderfully varied if somewhat rich repast, it may be ungracious for the reviewer to complain about the absence of one particular course. Yet it would have been extremely interesting, especially for a political scientist, to have a relatively brief and very incisive essay included in the volume which would *explain* the differences of views as well as of emphasis that can be found in the six principal contributions to the symposium, in terms of the basic economic and political philosophy of the writers. Dr. Machlup clearly indicates on what points these views differ, but he does not explain why.

The non-technical reader will derive from this book a great deal of food for thought and many acute insights into the complex workings of our economic system. Let him beware of the facile conclusion that "economists can't agree on most things"; let him rather conclude that ours is a very complex economic world and that no easy and ready-made answers are available to the great problems with which our free economic system is faced now and is likely to be faced for years to come. There is very much

in this volume which the reviewer would like to quote *verbatim;* but space is short and one quotation must suffice. It is derived from the conclusion of Professor Ellis's essay:

"America has much for which to be thankful and little to justify morose misgivings as to the future. Even our severest trials leave room for hope. We withstood the greatest depression of modern industrialism without civil disorder or political breakdown, and we were groping toward effective remedies. The problem of racial minorities is severe, but most Americans have faith in non-violent solutions. Our international isolationism has cost dearly, but increasing numbers of our citizens recognize the error. . . . Our sense of national unity is strong and balanced, without dangerous sectionalism on the one hand and without aggressive nationalism on the other. The sentiments of democracy, of the worth of the common man, of the dignity of labor, are lively and real. We benefit from a rich endowment of natural resources and the cross-fertilization of racial stocks and cultures. . . . Such a society can be the master of its economic fate. If, as it would appear, the broad masses of our people cherish the ideals of individualism and liberty, economic governance must for the most part consist in the impersonal mechanism of competition and competitive prices. . . . The American way requires this—rather than collectivism or economic government by planners—for the achievement of the ideals of full employment, material progress, and equality of opportunity."

MICHAEL A. HEILPERIN.

New York City.

1943 Annual Survey of American Law. EDITED BY ARTHUR T. VANDERBILT. (New York: New York University School of Law. 1945. Pp. vii, 962. $5.00.)

For years there has been a great need for an annual survey of American law, comparable to the annual survey of English law. In a review of a volume of the English survey, Mr. Justice Frankfurter said: "I am sufficiently chauvinistic to covet such an annual survey for American law by American scholars." Because of the multiplicity of jurisdictions in this country in contrast with England, and of the tremendous volume of legislation, judicial decisions, and administrative regulations and adjudications having the force of law, the mammoth character of the project has until recently baffled the most ambitious. We are, therefore, almost at a loss to explain the fact that this enterprise is now a reality and that four volumes ('42, '43, '44, and '45) are ready for distribution, due to the courage and industry of Dean Arthur T. Vanderbilt and the faculty of the New York University Law School.

The 1943 volume is divided into five major parts: (1) Public Law in

General (229 pp.); (2) Public Law: Social, Business, and Labor Regulation (223 pp.); (3) Private Law (281 pp.); (4) Adjective Law (110 pp.); and (5) Jurisprudence (83 pp.). These major divisions are subdivided into forty-seven topics, which are discussed by twenty-six different contributors chosen primarily from the faculty of the Law School of New York University.

The diversity of subject-matter prevented the development of a general thesis, giving a logical and inherent unity to the volume. Of course it is obvious from legislation, judicial decisions, and administrative regulation that there was an accelerated tendency toward a unified socialistic national state, sometimes called the transition from the judicial capitalistic state to the administrative socialistic state. There is this inherent thread of unity to the material, but on the basis of its formal organization, synthesis is limited to topic development. Each discussion assumes the form and substance of a first-class law-review article, subdivided, well footnoted, factual, analytical, suggestive, and at times philosophical. The mass of the material prevented monographic treatment with precision and definitiveness; fortunately, there is no attempt at codification. The treatment, however, never falls to the level of a mere summary.

More specifically, as an illustration, the field of public law is divided into (1) International Law and Relations; (2) Constitutional Law; (3) Civil Rights; (4) Administrative Law; and (5) War Powers and Their Administration. The sub-topic of constitutional law treats the development of the commerce clause, due process and equal protection, eminent domain and just compensation, full faith and credit clause, and the nation and the states. More meticulously, Mr. Hewitt, in discussing the expansion of the commerce clause, concludes that its scope is no longer a matter of names, whether production, marketing, mining, or consumption, but that it extends to any subject-matter regardless of its local character or its intrinsic nature if "it exerts a substantial economic effect on interstate commerce." Dean Vanderbilt deals masterfully with rule-making, administrative adjudication, judicial review, and administrative reform. The chapter on jurisprudence should be particularly interesting to political theorists, lawyers, and judges. About one-half of the volume is devoted to public law, and this material is almost a *sine qua non* for students and teachers of this subject.

Space is too limited to describe adequately and appraise this great collection of useful material. One may regret that its authorship was not more widely distributed among American scholars, including such men as Manly O. Hudson on International Law, Pound on Jurisprudence, Williston on Contracts, Powell or Corwin on Constitutional Law, or a Wigmore (if one can be found) on Evidence. But it must be admitted that

their omission has not impaired the authoritative character of the material. The book is a notable achievement of American scholarship, and the series should achieve a permanent place in the jurisprudence of the nation.

C. PERRY PATTERSON.

University of Texas.

Research in Public Administration. By WILLIAM ANDERSON AND JOHN M. GAUS. (Chicago: Public Administration Service. 1945. Pp. xiv, 221. $3.00.)

Here between the covers of a single small volume appears the story, or at least so much of it as seemed important for the printed record, of the Committee on Public Administration of the Social Science Research Council. Part I presents, chronologically at least, the whole story, from the original statement-of-plan for the proposed Committee (printed as Appendix 6) to recommendations for a postwar research program in public administration. Part II, which takes 70 of the book's 220 pages, consists of a memorandum prepared for the Committee by Professor John M. Gaus on "Research in Public Administration, 1930–1945." This memorandum is designed to bring down to date its author's earlier (1930) study of research in public administration. It does not fit in as an inseparable part of the Committee's report proper, though it does serve as a very useful companion piece for the report.

In 1930, public administration meant one thing: to most it meant, in a word, "posdcorb." In 1945 it meant something significantly different: it meant " . . . the study of government in action, government doing work and rendering public services." It had come to be recognized as " . . . an important phase or function of all governments at all times," as something " . . . closely intertwined with, and dependent upon, the nation's political institutions, traditions, and ideals in a most general sense," as something not " . . . set apart from, but [rather] an integral part of, the whole system of popular government and democratic ideals" (p. 106). Public administration during these fifteen years thus experienced highly important developments. It would be too much to say that it had attained maturity by 1945, but it would hardly be questioned that it had achieved a very considerable growth toward maturity. That this was true was due in no small part to the work of the Committee on Public Administration of the Social Science Research Council.

If Part I of the book (the Committee's report proper) is useful as a record of a significant experiment, Part II is important as an appraisal of trends and as a statement of the challenge before us. Professor Gaus' comments, if sometimes provocative, are usually incisive and always well-reasoned. Take, for example, the paragraph (p. 156) where he develops briefly his views regarding the environmental aspects of public admin-

istration: "The sheer divorce between an institution of higher learning and its ecological setting is no guarantee of a better educated and more cultivated type of university graduate. Maybe we have unhappily left out of our conception of the student some awareness of his dependence on, and his relation to, his physical and social environment and of the obligation that rests upon him for informed participation in the institutions by means of which men relate themselves to their environment." Or the section (p. 158 f.) where he speaks of the changing character of public administration: "I judge that we are likely to see more attention to substantive or policy problems, supplementing that on the managerial or more technical aspects of administration." He hastens to voice his opinion that the new emphasis will not lead to the ignoring of the managerial aspects of administration, though he does feel that those aspects will command relatively less attention than in the past.

From beginning to end, the book, frequently by implication but now and again by positive statement, reflects a deeper, broader, more virile, more significant concept of public administration than the term enjoyed earlier. The volume is therefore more than a record of significant achievement; it is a harbinger of better and more fruitful days for those who study public administration and those who practice it.

ROSCOE C. MARTIN.

University of Alabama.

Public Men In and Out of Office. EDITED BY JOHN T. SALTER. (Chapel Hill: University of North Carolina Press. 1946. Pp. xx, 513. $4.00.)

"Our government," writes John T. Salter in his introduction to this tremendously interesting series of thumb-nail sketches of figures recently or currently important in the political life of the United States, "is the government of the Constitution and the laws, but a constitution cannot enforce itself and neither can a law. So our government is also a government of men—public men usually called politicians. And it is these politicians that this book is about. It is a voters' gallery of politicians." The twenty-seven sketches comprising the volume are arranged in three groups: leaders in the nation and in the foreign service, leaders in Congress, and leaders in state and city government. The subjects have been so selected as to provide a very good cross-section of the public men in positions of major responsibility in America today.

Politically, more than half of them are Democrats—which is both explainable and excusable by reason of the long ascendancy of that party in national politics. Geographically, they are fairly evenly distributed throughout the country, from New Hampshire to Texas, from South Carolina to California. They come from twenty-two states—with four exceptions, one from a state. There are two each from California, Min-

nesota, and Texas, and three from New York. From the point of view of governmental experience, there is a president, a former vice-president and member of the cabinet, seven governors or former governors, three men with extensive experience in the Foreign Service, and fifteen legislators—nine senators and six representatives. Many of these, in all categories, have had previous political experience in state and local offices.

There are representatives of nearly every type of political personality: bosses like Hague and demagogues like Bilbo; liberals like Pepper and Wallace and reactionaries like Cotton Ed Smith; men with extensive educational backgrounds like Fulbright, Voorhis, and Winant, offset by other individuals who enjoyed only the most limited educational advantages. There are men like Fulbright and Voorhis who are, relatively speaking, political newcomers, in contrast with such seasoned veterans as Sabath and Smith. There are staunch advocates of international cooperation like Willkie and Stassen, offset by pre-war isolationists like Fish and Nye, all four of whom belonged to the same party.

These short sketches of the men who govern America, and who reflect the strength, the weaknesses, the peculiarities, and the prejudices of the voters who elect them, are easy to read. The authors are about evenly divided between professional journalists and college and university professors. A good many of both groups have themselves devoted some time to the public service. The authors of the sketches are all persons of some educational attainments. Although there is considerable evidence of research on the part of some authors, a consistent effort has been made to avoid the odor of the lamp, and extensive documentation. This is in accord with the expressed purpose of the volume to emphasize the importance of "human nature in politics."

The volume shows the elements of both strength and weakness commonly associated with books similarly prepared. In spite of the effort of the editor to secure some uniformity in method of treatment, the sketches still show a great deal of diversity in this respect; in spite of effort to secure an objective evaluation of the work of the individuals discussed, some show a strong tendency toward hero worship. It is difficult, of course, to be wholly impartial with regard to contemporary figures—to be candid without debunking, to recognize good leadership without becoming too enthusiastic about one's subject, as well as to be fair toward those of whose methods and purposes one disapproves.

The sketches themselves, interesting as they are, are made far more significant by the excellent Introduction and Interpretation (or postscript) prepared by the editor, who discusses such questions as the importance of compromise in politics, the recognition and possible rewarding of those who serve their country well, and the methods by which voters could be informed regarding the records of their representatives. It is

made abundantly clear that in the absence of proper training for intelligent voting, of adequate information regarding the service rendered by elected representatives, and of established standards or criteria for judging the records of representatives when known, the average voter is unduly influenced by a pleasing smile, a friendly greeting, and a hearty handshake. Numerous cases are cited to show that voters do measure up to the needs of the situation when the facts are properly presented. The fault, it seems, is not nearly so much with the voter as with our failure to find ways and means of getting facts before him in terms that interest him and that he can understand. Unless this problem is solved, the personality factor, and promises of "bread and circuses," will continue to decide many elections.

If the democratic process in this country is to be improved, if better informed citizens are to be so educated that they will choose public officials devoted to the public interest and qualified to serve that interest, this book should be very widely read. The pity is that as a university press publication, it is likely to be read very largely by political scientists who already know, or ought to know, most of what is in it.

W. Brooke Graves.

Bryn Mawr College.

Germany Tried Democracy. By S. William Halperin. (New York: Thomas Y. Crowell Company. 1946. Pp. viii, 567. $3.75.)

The present widespread discussion of the possible rise of a new German democracy has received a timely and thought-provoking contribution in Professor Halperin's well written history of the Weimar Republic. From its very inception, the new Republic was confronted by the uncompromising hostility of all nationalist groups, although it was supported by the overwhelming majority of the population. The Social Democratic party appears as the main republican force, and its increasing weakness and passivity mark clearly the Republic's gradual suffocation. But the author's hero is Gustav Stresemann. The book follows his heart-breaking uphill fight to convince the German people of the merits of his "policy of fulfillment," while at the same time pleading with Allied statesmen for concessions which alone would make his policy prevail over the bitter, unremitting onslaught of his political opponents, particularly the German Nationalists, Halperin's "bête noire." Whatever may have been the merits of allied, particularly French, suspicions of the German Republic, they were grist to the mill of the Republic's enemies, whose vituperative campaign caused Stresemann's untimely death. Halperin retells with great poignancy the tragic story of how the Allies denied the friends of the Republic what they were later to grant its enemies. True, after the fall of Poincaré in 1929, the Allies did grant concessions. But these were too

few and too hesitant to make the "policy of fulfillment" appear successful in the eyes of Germany's masses.

While the author strongly underlines the German grievances against the former enemies, he might have balanced these statements by pointing out more clearly that France's distrust was motivated by the incontestable fact that the German Republic had failed to wipe out the forces of militarism when it had the power to do so. Whenever right-wing militarists ran afoul of the law, they were treated with a consideration rarely accorded to left-wing radicals in similar predicaments. It is true that this failure of the government to act courageously was more often caused by weakness, disunity, and the fear of losing a few votes than by outright malevolence as the publicists of the Vansittart school later charged. But this could give scant consolation to a country which had then twice experienced the ravages of a German invasion.

Halperin sees in the economic depression which hit Germany after a short period of considerable prosperity the most important reason for Hitler's rise to power. On the one hand, many industrialists who hitherto had supported the more moderate conservative parties were alarmed by the growth of the Communist movement, and shifted their support to the Nazis. On the other hand, Bruening's endeavor to include the Social Democrats in his government came to naught, ostensibly because they objected to his deflationary policies. Deprived of a safe parliamentary majority (though the Social Democrats tolerated him), Bruening had to rely on the presidential emergency powers under Article 48 of the Constitution until he was ousted by the intrigues of Schleicher and Papen. Halperin's view of Bruening as a courageous statesman who tried to save democracy by authoritarian methods is plausibly presented, but will hardly remain unchallenged.

This book will give little comfort to those who profess to see in German history nothing but an unending conspiracy against the world. It establishes with clarity that a majority of the German people were opposed to Nazism as long as an expression of opinion was possible, and that the Republic was sincerely served by many true democrats. But it also makes clear that lack of courage and, in particular, inability to rise above party considerations, sapped the strength of the Weimar régime.

Professor Halperin does not draw any conclusions from the past with regard to the present. The parallels are nevertheless obvious—and ominous.

ROBERT G. NEUMANN.

Oshkosh (Wis.) State Teachers College.

The Great Retreat. BY N. S. TIMASHEFF. (New York. E. P. Dutton and Company. 1946. Pp. 470. $5.00.)

The thesis of this truly learned book is that the Soviet is "retreating"

from communism and that this retreat is the most natural development, since the seizure of power by the Bolsheviki in 1917, as the author sees it, was a catastrophe which temporarily interrupted but could not permanently suppress Russia's historical development as a nation. In the last dozen years, national Russia, he says, had made several convulsive efforts to throw off this alien incubus, but it was left for the soul-searing experience of the last war to effect a national redemption. Henceforth, therefore, the former Empire of the Tsars is no longer a *place d'armes* for an international communist crusade, but a nation being restored to its time-hallowed national foundations. This analysis, if correct, should be as reassuring to the Western world as it is gratifying to a Russian like the author, who is true to the historical culture of his people.

As the reviewer intends to question this generalization about the Soviet phenomenon, he deems it proper and essential to start by expressing his admiration for the thoroughness of the author's knowledge, the comprehensiveness of his coverage, and his expository skill. It is only a person of his rich Russian background—he was a university teacher in St. Petersburg, leaving Russia in 1921—that could show such skill in dealing with the intangible factors. Those who still assume that prior to 1917 Russia was a cultural wasteland, with an economy like that of modern Iran, will do well to read this book.

However, may it not be that the author's patriotism has impelled him to arrive at conclusions that do not adequately account for the past and that distort future vistas? Is it not possible that the October Revolution, while indeed a hurricane striking from the outside, nevertheless brought to light a peculiarity of Russia as a nation, namely, a lack of resistance centers in her social body to political vivisectionists, whether from the "right" or the "left"—Peter the Great or Stalin? By contrast, the Western nations, for causes inherent in their histories, have been found in possession of just such centers of resistance. The very history of Russia, over a thousand years long and abounding in heroic phases, has, in order to attain and keep national independence, exalted the ruler and concentrated in his hands all forces of national initiative. As a consequence, even the privileged classes were deprived of real political experience, or even of the ambition to matter politically on their own. When, with the fall of the dynasty due to the unhappy war, they were forced to shift for themselves, political talent was found lacking. Thus Lenin's victory in Russia may have been, in a measure, a victory by default, and his failure to extend communism to the West the effect of the West's capacity to offer resistance to those who would shunt the train to other rails.

As regards the future: Already the "nationalism" of the period of the war against Hitler is being rapidly shelved. Its bearers, the military, from the marshals of the Soviet Union to the "partisan" fighters, have been adroitly neutralized and the Leninist fundamentalism has apparently been

re-enthroned. The peoples of Russia, whatever their true wishes, are obeying their Communist leadership. The majority seem to be aware that, for better or worse, their land is permanently different from the contemporary Western world. The "retreat from communism" is not yet.

SELIG PERLMAN.

University of Wisconsin.

Britain: Partner for Peace. By PERCY E. CORBETT. (New York: Harcourt, Brace and Company. 1946. Pp. 177. $2.00.)

"The day of power politics is not over." This is the basic postulate underlying many publications of the Yale Institute of International Studies, and Professor Corbett's *Britain: Partner for Peace*, from whence the phrase is drawn, is no exception to that series. It is written in the reluctant conviction that the postwar world, like the prewar world, will be one of multiple, sovereign states—each primarily interested in its own security. Professor Corbett assesses the present power position of Britain and sets forth those facts which are most needed by American officials concerned with formulating our policy toward that country. It is open to grave doubt, however, whether the study at hand offers convincing proof that Anglo-American partnership will lead to peace, whatever the implications of the title or the telling arguments advanced for United States self-interest in supporting Britain.

Much of Professor Corbett's book deals with facts which are of the utmost importance if realism is to prevail in our relations with Britain. But, as in all social affairs, it is very often our opinions about the facts that determine policy, not the logical conclusions that might be drawn from them. Thus it is no direct criticism to suggest that his arguments for strengthening the British economy, for example, will hardly alter the opinions of those Americans who oppose financial aid to Britain at this time. Nor is it likely that even so clear-cut a view of Britain's trading difficulties will lead to proper American action. Steps which the United States must take if it is to expect Britain to agree to our desire for a world of freer trade include: tariff reductions; maintenance of full employment; participation in world currency stabilization; and agreement with Britain for a fair share of commerce on the seas and in the air. But these policies are only mentioned, although in all probability it will be American inaction in the economic sphere which will lessen the value of the Anglo-American partnership in time of peace.

On the political side, Professor Corbett has shown clearly why most Britishers now believe the balance of power concept to be outmoded and a wider security system to be necessary. Not only Russia's rise to the rank of a first-class power, but a declining navy and vulnerability to air attack has changed the British outlook. Yet the new organization of the

United Nations is examined in terms of the power needs of the great nations, and found to be little more than an association designed to perpetuate the power struggle. The analysis of the United Nations is particularly cogent, and the author demonstrates that the right of veto action on the part of the permanent members of the Security Council effectively reduces the new body to impotency as an agency to prevent war, except among lesser states. Britain's desire, as expressed by both Foreign Secretary Ernest Bevin and his predecessor, Anthony Eden, to transform the United Nations into a real world authority is recorded. But the author concludes that this desire is only a pious wish unless it finds favor in the United States and Russia.

Britain: Partner for Peace ends, therefore, where it should begin. The chief issue, which American foreign policy officials must face is, how to move forward jointly—not separately—with both of the other Big Three so that we shall avoid competition among them in an atomic armaments race. For one so exclusively interested in power factors, Professor Corbett strangely underrates the influence which the use of atomic energy will have on the equation of interstate relations. Writing after the failure of the London foreign ministers' conference last September, he would find little in what has happened since to warrant belief that Big Three aims can be reconciled. There can be no quarrel with the wish to strengthen the more limited United States-British ties; but Professor Corbett's guidance falls short, for he does not exhaust every possible step for reaching agreement between Russia and the Western powers. In this sense, his book does not sufficiently relate the facts about Anglo-American relations to the major problem of the day.

GRANT S. MCCLELLAN.

Foreign Policy Association.

If Men Want Peace. EDITED BY JOSEPH B. HARRISON, LINDEN A. MANDER, AND NATHANAEL H. ENGEL. (New York: The Macmillan Company. 1946. Pp. viii, 292. $2.50.)

This collection of essays grew out of the deliberations of the University of Washington branch of the Universities Committee on Postwar International Problems. A wide variety of authors range over a similar variety of subjects: security, regional organization, dependent areas, minorities, race problems, protection of individual rights, economic and financial aspects of peace, cartels, labor, relief and rehabilitation, communications, promotion of social welfare, psychological factors in world peace, education, science and technology, religion, and morality.

While competent, there is nothing novel or fresh in these pages; recommendations on specific problems roughly approximate those of the above-mentioned committee. But there is a salutary emphasis on cultural factors,

and useful anthropological materials have been introduced. Chapters on international law (Chap. 4), colonial and race questions (Chap. 9), psychological postulates for peace (Chap. 17), the great tradition and the need for a world government (Chap. 23), and the moral basis of peace (Chap. 24) are noteworthy. A thesis of sorts crops up now and then, though it is nowhere consistently developed. World government or world federation based upon Western traditions appears to be the goal of a majority of the writers. The assumptions which underlie this fragmentary argument are never accorded formal presentation.

In addition to the recommendations, there is much of value. It is a pity that its impact is somewhat dulled by a lack of integration and by inferior organization. Findings of the group are not summarized and focused. Connections between chapters, and between certain chapters and the theme, are often strained or unclear. Perhaps publication requirements explain dragging the atomic bomb into the discussion by way of inadequate, scattered footnotes.

The whole effort—good as it is at many points—is further weakened by serious omissions. The problem of international security is not defined, despite a chapter devoted to it. Neither are the terms "balance of power," "power politics," "regional organization," and "world federation." The continual use of such terminology in an undefined context can only result in confusion over ends and means. The authors omit any consideration of the new distribution of national power in the world and its effect upon security. An analysis of "Big Three" or "Big Five" relationships would seem to be pertinent to a study of this kind. Topics treated do not include the basic factors in international relations—the factors which condition and motivate nations in their relations with one another. No attempt is made to assess the interests of the states which must preserve peace, the clashes of these interests, and the effect upon their reconciliation of public opinion, methods of diplomacy, political philosophies, and the bases of national power. The authors accept the postulates of Western civilization as a working principle without once pausing to inquire how the gap between East and West can be bridged on such a foundation.

Talking about things which will affect the peace, and which will be affected by it, is not necessarily the same as analyzing things fundamental to the peace—that is, the raw materials out of which the peace must be hewn. As a manual for peacemakers *now*, this book is somewhat barren; as a sketch of long-term *desiderata*, it is worthy of respect. In fact, when men achieve peace, it will probably be pretty much as these writers say it ought to be; their words are therefore important. In the meantime, however, the question is, how?

RICHARD CARLTON SNYDER.

Princeton University.

The Danzig Dilemma. By John Brown Mason. (Stanford University, California: Stanford University Press. 1946. Pp. xviii, 377. $4.00.)

The book under review is an exhaustive analysis of all the aspects of the problem of the Free City of Danzig during the period of its existence, 1920–1939. After a survey of Danzig's nearly a thousand years of history down to 1918, the author investigates the creation of the Free City at the Paris Peace Conference. Successive chapters deal in great detail with the government, politics, and finances of the Free City, the rôle of the League of Nations as protector of Danzig, guarantor of its constitution, and mediator and arbitrator in all disputes between Danzig and Poland, and with Danzig's special treaty relations with Poland. In the latter respect, Poland's conduct of Danzig's foreign relations, the Harbor Board, the rise of Gdynia as a rival, Poland's rights in the railways, postal and other communications, the Danzig-Polish customs union, the problems of Poland's military and naval rights, the status of Polish officials and government property, Polish minority rights and the status of the Free City under international law, are all most carefully studied.

The text is followed by an extremely valuable bibliography, by a reproduction of the basic treaties and of Danzig's constitution, by lists of the high commissioners and their decisions, and by other appendices containing important data.

The author starts from the premise that the creation of the Free City was a compromise solution, to reconcile Wilson's points on the self-determination of nations, as Danzig was a German city, and on a free and secure access to the sea for Poland. The compromise, made by the Great Powers, was welcome neither to Danzig nor to Poland. The status created was without precedent, the norms of the basic treaties were incomplete and vague. Hence the many and bitter disputes between Danzig and Poland. These disputes, although often on seemingly minor matters, were always colored by mutual suspicion, distrust, and dislike, and nearly always turned on the problem of Danzig's statehood—Danzig trying to defend her status, Poland trying to get more than she had a right to under the treaty provisions. The situation, the author holds, could not have lasted for twenty years if there had been no special machinery of the League of Nations, and he particularly commends either party being able to bring any and all disputes before the international authorities empowered to settle disputes. On the whole, the author states, the compromise solution was superior to either leaving Danzig with Germany or handing it over to Poland. He hopes that the experience of Danzig will be seriously taken into consideration by the present peacemakers when dealing with the dilemma of Trieste.

While this latter hope seems not well-founded, looking at present developments, the book is a model as a monograph. It is based on a compre-

hensive study of all the documents, treaties, decisions of the high commissioners, advisory opinions of the World Court, the *plaidoyers* of Danzig and Poland, the whole literature in the different languages, as well as on a personal investigation in Danzig and at Geneva. This reviewer, who has himself for many years studied the problem and treated it in a number of works, can testify that, in spite of the large literature on the Free City of Danzig, the book under review is an outstanding contribution.

JOSEF L. KUNZ.

University of Toledo.

China in the Sun. BY RANDALL GOULD. (Garden City, New York: Doubleday and Company. 1946. Pp. xi, 403. $3.50.)

Fortified by a gazetteer-like knowledge, an American news correspondent and editor of English language and vernacular papers writes in unorthodox style of China in the reconstruction era. Necessary historical background is provided by chapters enlivened by personal experiences. Thereupon the writer boldly grasps "the hottest nettle" in China, "Kuomintang vs. Communism." Contrasted at least with numerous writers, self-confessed partisans of Communist China, this is one who in the opinion of the reviewer displays a reasonably balanced judgment on the qualifications of the two major political antagonists of China.

The Kuomintang, historic party of revolution, must, argues the writer, command sympathy from an impartial observer as carrier of the chief burden of government and resistance. Such a load was bound to show up the weak spots, and peace caught the government "with its politics down (*sic*)."

From the Communists' earlier Kiangsi program, the author demonstrates that what they advocate is not communism in any text-book sense. There was no collectivism or tie with the industrial proletariat of the cities. Transfer of ownership to peasants was merely a technique to win support of the virtually landless classes as against the oppressive landlords. But, points out the writer, this process would merely set up the peasants as a new landlord class in a vicious circle, with inevitable recurrence of maldistribution of land and abuse of the privileges of ownership. None the less, the Chinese Communists, in spite of present moderate practice, "victims of arrested development," are committed to ultimate Marxism. Equally, however, the Nationalist Socialist party expects to see socialism realized. Kuomintang China is taking advantage of a virtual industrial *tabula rasa* to legislate a mixed economy of public ownership of railways and tele-communications with nationalization of mineral wealth, and even heavy industries as possible spheres of government activity.

The apparent assumption of Russia's generally altruistic attitude towards China may be questioned by some readers. From Ambassador

Karakhan's self-denying negotiations with Wellington Koo in 1924 down to the Sino-Soviet "friendship" treaty of August, 1945, Russia has given proof, so the writer implies, of her sincerity. She will not be expected to interfere in China's internal affairs. But with Russia closest and having the most at stake, Chinese armed separation, the writer goes on to warn, will not only bring Soviet help for the Chinese Communists, but Russian involvement in all the potential Polands along Sino-Russian borders. Japan is rather surprisingly dismissed as a negligible factor, "from Sian onward . . . if she had but known it," the writer seeks to prove. America's prodigious war effort in the China-India-Burma theatre is represented cynically enough as an exploitation of American generosity and good intentions.

Randall Gould is confronted with the dilemma of all writers on China; for whom is his book written, specialist or layman reader? Being frankly a newspaper man, he avoids, at least, the largely illusory institutional approach to contemporary China favored by more academic-minded writers. Instead, he furnishes a diversified and provocative discussion of China in all facets.

ESSON M. GALE.

University of Michigan.

Values for Survival; Essays, Addresses, and Letters on Politics and Education. By LEWIS MUMFORD. (New York: Harcourt, Brace and Company. 1946. Pp. viii, 314. $3.00.)

These papers, written between 1938 and 1946 and collected into three books of the present volume, consist, as the author says, of "variations on a single theme: What must modern man do to be saved?" It is recalled that most responsible atomic scientists, indulging in no impossible fantasies, have pictured a planet made uninhabitable as a result of scientific progress together with a moral degeneration. Prophets of the present day, almost with a single voice, say that modern man must reform himself or be lost entirely. Mumford suggests, however, that "men act long before institutions move." The changes he would advocate are seen as already having taken place, "in token form," for example "through the redirection of effort by individual mathematicians and physicists." Whitehead and others are mentioned. The gist of the emphasis is that which appears in the most recently written of the essays, entitled "Program for Survival," i.e., that "unconditional coöperation is the price of mankind's survival."

The first of the essays, "Call to Arms," was published originally in the *New Republic* in May, 1938, with its urgent: "Strike first against fascism and strike hard. But strike." The next examines "The Corruption of Liberalism." *Ideal* as distinguished from *pragmatic* liberalism was soundly based upon its universal elements such as "arose long before modern

capitalism: . . . [and] were part of the larger human tradition, embodied in the folkways of the Jews, in the experimental philosophy of the Greeks, in the secular practices of the Roman Empire, in the sacred doctrines of the Christian Church, in the philosophies of the great post-medieval humanists. The Marxian notion that ideas are always the shadows of the existing economic institutions runs bluntly against facts precisely at this point" (p. 25). These were the elements of liberalism that became, moreover, the real object of the fascist attacks, and were corrupted also by the pragmatic phase of liberalism itself in its preoccupation with the mere machinery of life.

How, then, to be saved? The answer would be nothing new, but that of the advice and appeal which Mumford extends in the open letters to certain German friends, written originally at the request of the O.W.I. and comprising, together, Book III of the volume: "You will seek Bergson rather than Schopenhauer, Emerson rather than Nietzsche, Goethe rather than Spengler, Jesus rather than your gods of battle" (p. 314).

Much the same answer is presented in the addresses on education. Teachers and schools will need to have in view, not the aim of fitting the individual into his social context in an era of expansion—a three-fold expansion, territorial, industrial, and populational—now outmoded, but, in a new era of stabilization, the aim of nourishing the individual personality in a way that will unfold the community as it unfolds the individual himself.

Mumford's manner varies with the task he sets himself. We have not here the heavily laden style of *Technics and Civilization*. The addresses to teachers, which are matter of fact, are almost as if by someone other than the author of the essays and the letters to Germans. The letters, though at times rising to a true elevation, often tire with the patronizing and scolding tone. Invective might well have seemed more genuine. If the reviewer is any judge, there is in both the essays and the letters a degree of writing for writing's sake. This matter affects the judgments expressed. It may be right to attribute the poison of Nazism to deep-rooted sources in the German culture. Yet the author knows so well how great was the share of the economic maladjustment that runs through the whole world, and knows too, as he well states elsewhere, how deep-seated now in the whole Western culture lies that philosophical subjectivism to which he ascribes the fascist roots. Might he have felt more confidence of his audience if he had stated simply the larger truth of the matter?

Here is not, of course, the timidity in speaking out common to lesser workers in the field of social science. If not invariably of the highest conviction or convincingness, here is none the less truth.

WALTER SANDELIUS.

University of Kansas.

Proudhon et le Christianisme. By Henri de Lubac. (Paris: Les Collections Esprit. Editions du Seuil. 1945. Pp. 318.)

Francis G. Wilson has reported that during a meeting of the political theory panel of the American Political Science Association held in November, 1943, the importance of the "theological approach to politics" was mentioned. "One group of theorists would say that a political theorist must be a reasonably good theologian . . . because the theological approach clarifies fundamental issues of the nature of man, society, and the universal order." (See this Review, Vol. 38, p. 727.) This interconnection between theology and politics has been energetically stressed by P. J. Proudhon. His sentence . . . "at the basis [*au fond*] of our politics we always find theology" (*Confessions*, 1849) has become famous.

Therefore, a new interpretation of the life and work of Proudhon by a theologian will arouse much interest. Father Henri de Lubac's book does not claim to analyze all parts of Proudhon's vast, too vast, work. But his particular approach—Proudhon and Christianity—gives him the opportunity of presenting a survey not only of Proudhon's life, but also of his central ideas. This very carefully written book will be appreciated by everyone who is not satisfied by the usual stereotypes applied to Proudhon, often characterized as an anarchist, as a utopian, and as the man who coined the sentence: *La proprieté c'est le vol* ("property is theft"). Those who know about Proudhon's conflicts with Catholic circles and about his rejection of Catholicism will be surprised to note the sympathy with which Father de Lubac regards him. Proudhon appears as a believer in justice, which is very close to Christian conceptions, although he misunderstands and opposes fundamental Christian views on charity, the relation between God and man, etc. Many attacks of Proudhon against the Church are interpreted as attacks on the traditionalism of de Maistre, de Bonald, and Lamennais, which, according to Father de Lubac, does not correspond to orthodox Catholic doctrine. Proudhon's thought is dominated by the acceptance of an eternal antagonism between the various elements constituting the world and determining human existence. But this antagonism is overcome by the belief in justice, which is, on the one hand, objective order and on the other hand, a real though not necessarily victorious, force in individual and social development.

Very valuable is Father de Lubac's interpretation of Proudhon's views on the state and property. He convincingly demonstrates that Proudhon did not fight the state, but only a centralized all-embracing political Leviathan. It is regrettable that, due to the limitation imposed by his special theme, Father de Lubac does not give a detailed analysis of Proudhon's ideas on federalism, although he emphasizes his views on smaller groups, particularly the family. Interesting are the pages devoted to Proudhon's relations with Karl Marx. Their quarrel not only had a per-

sonal cause, but was the consequence of radically different basic attitudes. Marx appeared to the moralist Proudhon as a utopian who overestimated the possibility of changing human society by purely external means, and Proudhon's emphasis upon an eternal human moral nature above all social and economic changes was necessarily very repugnant to Marx. Father de Lubac sees Proudhon as a French moralist, in many respects similar to Péguy, the great French national hero who was killed in the First World War and whose writings have been claimed by the most various camps.

It may be noted that Father de Lubac opposes attempts made by circles around the Action Française to present Proudhon as a patron of an anti-democratic attitude. Proudhon's belief in justice as expressing order, and the human claim for order, separates him from all movements submerging the person in collective groups, as well as from nationalistic élites who try to impose their will and intelligence upon the people.

A minor error: Proudhon died on January 19, 1865, not on December 19, 1864. And is his posthumous book on Jesus really authentic? Finally, the wish may be expressed that the as yet unpublished *Carnets* of Proudhon may be published, as well as a revised and complete edition of his correspondence, which is a most important source for social movements in the nineteenth century.

WALDEMAR GURIAN.

University of Notre Dame.

BRIEFER NOTICES

AMERICAN GOVERNMENT AND POLITICS

In the past quarter-century, the most important constitutional development concerning civil liberties has been the interpretation of the Fourteenth Amendment as a protection of other than property rights. One of the beneficiaries of this "nationalization of civil liberties" has been the study of sixty-nine federal cases—undertaken by Bernard H. Nelson in *The Fourteenth Amendment and the Negro Since 1920* (Catholic University of America, 1946, pp. viii, 185)—most of which have extended the protection granted the Negro against state governments. Throughout the 1920's, the Supreme Court moved cautiously and formulated little new constitutional law concerning Negro rights, although it did find due process ignored in a mob-dominated criminal trial and in the first Texas "white primary" case. Between 1931 and 1935, the Court began to concern itself with minimum standards of fairness in state criminal procedure. It held that the right of counsel in capital cases was part of due process and that the systematic exclusion of Negroes from jury service denied equal protection of the laws. The period 1936–43 saw a fuller flowering of the liberal interpretation of the Fourteenth Amendment. Under the

leadership of the National Association for the Advancement of Colored People, with its increasingly able corps of Negro lawyers, Negroes pressed a greater number of cases to the courts, and they won a higher percentage of favorable decisions. Victories scored under "equal protection" included such points as equality of opportunity for professional training at state universities, equal pay for school teachers, and protection against the systematic exclusion of Negroes from both grand and petty juries in cases involving a Negro defendant. Extreme instances of third-degree treatment applied to Negro suspects were held to deny due process. In short, "due process and equal protection of law were both more broadly interpreted and applied after 1936, in regard to litigation involving the Negro, than at any other time in the history of the Supreme Court."—DONALD S. STRONG.

Seven years of research have gone into *All These People; The Nation's Human Resource in the South* (University of North Carolina Press, 1946, pp. xxxiii, 503, $5.00), by Rupert B. Vance in collaboration with Nadia Danilevsky. The book is dedicated to Howard W. Odum, and it may well be regarded, in accord with Vance's expressed hope, as a companion volume to Odum's *Southern Regions of the United States*, which appeared ten years ago. The text is supported by 146 tables and 281 figures, consisting mainly of population charts and maps. The thirty-two chapters are grouped under five "parts," entitled, "The Dynamics of Population," "Population and the Agrarian Economy," "Population and the Industrial Economy," "Cultural Adequacy of the People," and "Social Policy and Regional-National Planning." Southern population trends and problems are surveyed in relation to the physical and economic resources of the region, as well as to the South's place in the nation. The South is the seedbed of the nation, and the author notes that Southerners, with less on which to live, "are doing more to replace themselves in the next generation than any of the Nation's folk." In the Great Depression, the South's growing population was a liability to the nation, in wartime it was an asset, and in the immediate future it may again become a serious problem. In the long-run slowing-up of the natural increase in the population of the whole country, the relatively high birth-rate in the South may become a favorable factor again. To say the least, the South offers the United States a great population question, with people being the region's largest export crop. This question ramifies into issues of education, health, economic balance or imbalance, and a whole set of interregional differentials. It includes the problem of the status of the millions of Negroes in the American economy. All these matters are here brought together in a well documented analysis by an eminent sociologist, who is also an expert regional geographer. This is a definitive study, and the material is presented with charm and clarity.—H. C. NIXON.

For some time, an objective analysis of public or group opinion toward the unprecedented increase of governmental powers and functions under the New Deal has been needed. In a carefully delimited study, *Reactions of Major Groups to Positive Government in the United States, 1930–1940* (University of California Press, 1945, pp. 165, $1.75), Thomas Paul Jenkin makes a substantial contribution toward filling this gap. After the introduction, a chapter on "The Political Thought of the New Deal" provides the frame of reference for the remainder of the volume. Using cogent citations from addresses of President Roosevelt, the author synthesizes the bases and limits of political authority, the concepts of liberty and equality, and the proper rôle for government as they developed during the decade considered. This chapter on the political philosophy of the New Deal is the most valuable and useful of the volume. In succeeding and separate chapters, an analysis is made of the reaction of the major representatives of commerce and industry, agriculture, and labor to these concepts of positive government. Jenkin demonstrates that, on the whole, the decade resulted in the abandonment of the negative psychology which was at the base of the traditional approach to government, and that it witnessed a widespread acceptance of the necessity for positivism. "Much of this acceptance," however, "was defined in terms of the emergency conditions that obtained, and much of the approval was not at the same time approval of the bases upon which the New Deal chose to rest its case" (p. 398). This broad conclusion is circumscribed with the recognition throughout that there are inconsistencies in the political thinking and desires of each group and that the older tradition is not dead. "Localism" has continued with considerable force among agricultural associations, business groups "have become patrons of 'state rights'," and labor has deplored "centralism," "although its decentralization is more to be associated with functional groups than with local government" (p. 397). The point, too often overlooked, is well made that these vested interests have been given a share in the service aspects of government such as the A.A.A. Frequent summaries, a full chapter devoted to conclusions, and extensive citations add to the volume; their absence would have resulted in some confusion. This reviewer hopes to see a similar study, five years hence, on the reaction of these and other groups to positive government from 1940 to 1950.—Hugh A. Bone.

Elmer Warren Sawyer's *Insurance as Interstate Commerce* (McGraw-Hill, 1946, pp. xi, 169. $2.50) is a monograph in an "insurance series" offered by the publishers mainly for the use of insurance executives and public officials. The author surveys the legal basis of taxation and supervision of the insurance business as it was dislocated by the Supreme Court's decision in the South Eastern Underwriters' case in 1944. He out-

lines first the case law on federal-state regulation of interstate commerce and state regulation of insurance prior to 1944. The above decision, in the author's opinion, made insurance as commerce subject to many rules of past decisions of the Supreme Court in the whole field of commercial regulation. The decision also placed insurance within the jurisdiction of present federal legislation on interstate commerce generally. Congress may in the future enact specific insurance legislation. Moreover, since the decision of 1944, the validity of every state law, administrative ruling, and judicial decision in the field of insurance regulation is open to question. It now appears that Congress will allow the states to participate in a federal plan of coöperative regulation of insurance. The author explains why he considers joint action among the states to establish uniformity of state insurance legislation imperative to satisfactory federal-state regulation. Congress is not likely to leave such matters as foreign insurance companies, reserves, deposits, and investments under existing state regulations unless such regulations are reasonably uniform where uniformity is desirable, or perhaps necessary. The author suggests the creation of a council representing the various branches of the insurance business to recommend plans for public regulation, both federal and federal-state. This volume should be useful as an outline of a preliminary approach to the problem of reshaping the public law of insurance.—ALDEN L. POWELL.

Claude R. Tharp, research associate in the Bureau of Government, University of Michigan, has written a carefully detailed but pedestrian report on *Social Security and Related Services in Michigan; Their Administration and Financing* (University of Michigan Press, 1946, pp. vii, 180), as No. 16 in the Michigan Governmental Studies. The author rightly states at the outset that the social security system which has evolved since the enactment of the Social Security Act in 1935 is complex and difficult for the layman to understand. Unfortunately, the clarification which he introduces for the state of Michigan will continue to escape all but the most assiduous laymen, for the rigidly descriptive method adhered to by the writer makes for dull reading. On the other hand, the specialist in social security problems will find here a point-by-point outline of the legal basis, eligibility requirements, financing, and administrative arrangements for each of the important social security services—public assistance, welfare services for children and handicapped persons, health and medical services, and social insurance. For many of the services described, there are useful financial tables illustrating trends, locating Michigan with reference to other states, and charting receipts from the federal government. With few exceptions, the author has avoided making judgments about the adequacy of coverage, assistance, or administration. This reviewer is reminded of bureaucratic memoranda, written in fear of of-

fending some one, when Tharp departs from his routine descriptions to assert boldly that "there has been a growing consciousness of the need for strengthening and coördinating the child welfare services" (p. 42). Here the situation is so bad that four previous studies, cited by the author, have pointed up the need for reform. The report will appeal to those who like their facts and figures undiluted by critical evaluation.—ROBERT A. WALKER.

In answer to the question, *Should State Unemployment Insurance Be Federalized?* (American Enterprise Association, National Economic Problems Series, No. 419, 1946, pp. 71, $0.50), Herman Gray, chairman of the state advisory council of the New York unemployment insurance system, voices a confident negative. After presenting a simple version of the workings of the present unemployment insurance system, he undertakes a survey of the problems of coverage, eligibility, adequacy of benefits, multistate workers, financing, and administration. He finds much wrong with the present state systems, but nothing of import that nationalization would right. Central to his arguments are the points that insurance is a mitigating instrument and not a part of a national system for control of the economy; that adaptation of provisions to local conditions is a real if sometimes neglected value; that most industrial employees now have as great, if not greater, potential benefits than they could expect under a national system; that the multi-state problems have been solved by interstate agreement; and that the quality of state administration of the programs is superior to what could be expected under a national program. A number of specific recommendations for changes in the laws are made, and tables depicting state unemployment compensation laws and systems are appended.—KARL A. BOSWORTH.

In his *Railroad Commission to Corporation Commission* (Bureau of Government Research, University of Kansas, 1945, pp. 108), Edwin O. Stene relates the interesting but involved story of the evolution of an important agency of government. The Kansas Railroad Commission was established in 1883, abolished in 1899, reëstablished in 1901, and replaced in 1911 by a Public Utilities Commission which was reorganized in 1921 and replaced in 1925 by a Public Service Commission. The Public Service Commission, in turn, was reorganized in 1929 and replaced by the present Corporation Commission in 1933. During this time numerous changes were made in the powers and duties of the Commission, and in the number, selection, and tenure of its members. The railroads had received more in federal and state land grants and from local stock subscriptions than their total construction costs. Their rates were high and discriminatory as

between both communities and individual shippers. Local investors were "squeezed out" by stock manipulations, bankruptcies, and reorganizations. To the Kansas farmer, the railroads had become "symbols of corporate greed." The consequent demand for regulation, first of railroads, then of all public utilities, and finally of some other corporate activities, brought a long series of political contests—between corporate and agrarian interests, Republicans and Democrats, Republicans and Populists, and governors and legislatures. Each victory was followed by a move to abolish, recreate, or reorganize the Commission, to expand or contract its powers, or to change its personnel. Perhaps the Commission has not yet found its final mold, but apparently some form of administrative regulation of public utilities has come to Kansas to stay.—ROGER V. SHUMATE.

Edward S. Corwin's familiar work, *The Constitution and What It Means Today*, in its eighth edition, continues to serve its purpose well. In pithy summaries, the volume treats the interpretations of the Constitution's passages, not only by the Supreme Court, but also by Congress and President. The book is also an analysis of the growing Constitution. It makes clear throughout that the Constitution can never be read simply as a lawyer's rule. Indeed, from this discussion the political rôle of the Supreme Court emerges clearly. It puts the technical tools of courts, such as *stare decisis*, into perspective and relates the judicial method of constitutional interpretation to others: "A court, it is said, is apt to reflect that a present decision will be a future precedent. But then, executives are apt to reflect too" (p. 185). Although the volume illustrates "the political quality, in a broad sense, with which much of constitutional law has always been infused and probably will always be" (p. 192), Professor Corwin might have helped us discern more of the nature and consequences of this political quality. It may, as he says, be no contribution "to public morale when the Supreme Court of the United States splits seven ways for Sunday" (p. x). Yet may we not have in this very difficulty clues for understanding the Constitution today? But they are clues needing Professor Corwin's insights and interpretations.—E. S. WENGERT.

The past and the present are expertly linked by Richard B. Morris in his *Government and Labor in Early America* (Columbia University Press, 1946, pp. xi, 557, $6.75). Professor Morris has performed a valued service in the field of American labor history through this intensive examination of the legal and social position of free and bound labor in early America. Utilizing original sources almost entirely, such as some 20,000 cases from the inferior court records of the American colonies, he has done an excellent job of integrating a tremendous wealth of factual data into a logical and, on the whole, readable pattern. In the stress and strain of recent

labor relations experience during wartime and reconversion, it is good to be reminded by Professor Morris' thorough study that such harassing problems as labor shortages, absenteeism, immigration, employment of women and children and, particularly, the government's efforts to regulate prices and set maximum wages, are by no means unique problems of recent vintage. Each of these and many others of vital importance in contemporary relations between government and labor were wrestled with valiantly by the American Revolutionary fathers. Professor Morris' scholarly account of the successes and failures encountered in meeting these problems is an invaluable aid to achieving an intelligent perspective and understanding of many of our present major difficulties.—HAROLD W. DAVEY.

Not many of the current crop of proposals for the achievement and maintenance of full employment in postwar America agree in any important particular, except that it would be nice to have. J. Philip Wernette's *Financing Full Employment* (Harvard University Press, 1946, pp. x, 126, $2.00) briefs and rests its case on the continuing need of our economy for new money. Historically, new money has entered the system without any planning. Our luck ran out in 1929 and we had the Great Depression. In 1933, we had 41.7 billion dollars (money in circulation and bank deposits). Federal deficit financing increased it to 117 billion by 1945. We should have 173 billion by 1960 and 363 billion by 1980. The government should *create*, not borrow, this new money at rates rationally calculated to assure full employment. Government should pay it out when business slumps, reduce the debt, and issue pessimistic statements when business over-booms. A seven-man Federal Stabilization Board (a sort of expanded Federal Reserve Board), assisted by an advisory committee of departmental and congressional representatives, should run the program. The book was written before VJ Day. By June, 1946, there was, however, no agreement between the executive and legislative branches on any single phase of a stabilization program.—W. BAYARD TAYLOR.

In *Our Oil Resources* (McGraw-Hill, 1946, pp. 331, $4.00), Leonard M. Fanning, editor, and sometime director of public relations of the Petroleum Institute, has brought together seventeen papers and addresses by officers and scientists of major oil companies. Through this medium, the book presents both the viewpoint of the oil industry and a survey of its current situation and history in a manner similar to two previous volumes sponsored by the Institute, *American Petroleum Industry, 1935* (1936) and *Petroleum Supply and Demand* (1925). "Resources" covers proved and potential oil reserves in American and foreign fields and also technical developments resulting in more complete recovery and utilization of

petroleum. Gas, coal, oil shales and sands, and, ultimately perhaps, agricultural wastes, receive attention as potential sources of petroleum products. Forecasts of the early exhaustion of petroleum derived by dividing known reserves by annual production are dismissed as completely fallacious. Only because it was free from excessive restraints, it is asserted, was the American oil industry able to supply nearly 90 per cent of the petroleum needs of the United Nations during World War II, and the industry itself is the only kind of "reserve" which could meet the demands of another similar conflict. However, state regulation is now operating in the more advanced states, and the conservation practices resulting from the Interstate Oil Compact are favored.—W. ROLLAND MADDOX.

The small volume entitled *City Problems of 1945–1946* (United States Conference of mayors, 1945, pp. 163), under the editorship of Paul V. Betters, is the Annual Proceedings of the United States Conference of Mayors held in New York City on December 10–12, 1945. The title is expressive of its contents. Following the presidential address by Mayor F. H. LaGuardia, such problems as "Outlook for Employment," "Inflation and the Cities," "The Atomic Bomb," "Post-War Public Works," "The National Airport Program," "The Housing Problem," "The City and the Veterans," "The Post-War Highway Aid Program," "Surplus Property Disposal and the City," "The States and the Cities," "A National Health Program—American Style," and "Pending Federal Legislation Affecting Cities" are discussed by competent authorities. The editor makes no attempt, either in an introduction or in concluding remarks, to summarize the conference. However, the discussion which took place after the presentation of each paper is included and is a worthy addition. The volume is valuable for the municipal official and the citizen alike.—STUART A. MACCORKLE.

Parties and Politics in the Local Community (National Council for the Social Studies, 1945, pp. 143, $0.50) was written by Mrs. Marguerite J. Fisher, and the accompanying teaching aids by Miss Edith E. Starratt. The pamphlet is one of a "Community Study Series" for secondary school teachers, a project of the Maxwell School of Citizenship of Syracuse University, and the data were edited by the late Professor William E. Mosher and Professor Roy A. Price. The purpose is to give the student a fuller understanding of local government in the United States in general and in his local community in particular. Valuable data are presented in separate chapters on party organizations; nominating methods and campaigns; suffrage, registration, and elections; and citizen organizations and economic pressure groups. Aside from bossism and reform movements in a few of the larger cities, the local community receives scant attention.

There are, however, excellent suggested teaching aids, designed to encourage the use of the local community as a basic textbook and laboratory. There is also a good bibliography.—WILLIAM L. BRADSHAW.

John W. Kilgo's *Campaigning in Dixie* (Hobson Book Press, 1946, pp. 225, $2.50) deserves only a very minor footnote in the folklore of American politics. The title is deceptive, for the book is actually devoted only to the 1944 campaign in Tennessee, when the author was Republican nominee for governor. Mr. Kilgo might have had a good story if he had confined himself to his technique of campaigning with a hillbilly band to draw his crowd. Instead, his writing is inconceivably discursive, filled with a miscellany of homespun anecdotes and hillbilly philosophy. His case for a two-party system in the South, though a worthy one, is very poorly presented. Consequently this little book is noteworthy primarily as an example of what can get into print notwithstanding the wartime paper shortage. Students of party leadership may see in the author's views interesting examples of the naïveté of party loyalty in the Appalachian region, where "public opinion" became crystallized into inflexible custom during the Civil War and has remained solid ever since. Even as a collector's item in rustic humor, this book is of only second-rate value.—J. B. SHANNON.

FOREIGN AND COMPARATIVE GOVERNMENT

Beatrice Webb (Harcourt, Brace and Co., 1946, pp. 229, $3.00), by Margaret Cole, lays no claim to being a "definitive" biography. The continuing paper shortage in England prevented a volume adequate for that purpose. We still wait for the second installment of Mrs. Webb's autobiography and for the publication of her diaries. Beatrice Webb is an intriguing figure: her unusual beauty; the difficult and exacting profession which she virtually created for herself; and the marriage which appeared the deliberate selection of a helpmate for her chosen work—all these excite our interest. Mrs. Cole traces her career from the early pioneering research into coöperatives and trade unions—social institutions which English scholars had not considered worthy of notice—down to the last great investigation which she and Sidney undertook in 1932, when (both of them over seventy) they set out adventurously for Russia to study that great new social institution, the U.S.S.R. In between were the many years in which their research covered wide areas of British social history and their activities an equally wide range of reforms. An American finds especially interesting the account of their relation to organized labor and the slow growth of the Labor party. Apparently the Webbs and other "intellectuals" had a more difficult time and were somewhat less success-

ful than we had assumed in their attempt to share with industrial workers in the building of a political movement. Mrs. Cole's book leaves many questions unanswered, chief among them how the Webbs could have accepted the Soviet system so whole-heartedly. Moreover, it is not long enough to reveal the full significance of Beatrice Webb's life, which can really be understood only against the background of the social, economic, and political history of England during her lifetime. Americans, lacking adequate knowledge of that background, will regret the enforced brevity of this biography.—ELIZABETH BRANDEIS.

One gathers from page 16 of Kimon A. Doukas' *The French Railroads and the State* (Columbia University Press, 1946, pp. 287, $3.50) that the author's chief purpose was "the putting together of the most pertinent facts and figures concerning French railroad ownership and operation in one continuous record that extends over one hundred years." The hope is expressed that this has been accomplished. In outline, Part I is concerned with railroad building, 1823–1887; Part II, with railroad prosperity, 1887–1914; Part III, with developments, 1914–1921; Part IV, with the 1921 reorganization; Part V, with post-war difficulties, 1921–1937; and Part VI with the nationalization of 1937. While Doukas' courageous attempt may be admired, and while he has given us the first treatise in English on the general subject, the work is scarcely definitive—even though the assistance of almost a round dozen of Columbia professors is mentioned gratefully in the "Acknowledgements." Perhaps the study can be labeled "exploratory." Perhaps it can more appropriately be labeled "narrative," for it falls more easily into the latter category than into that of a penetrative analytical investigation under its own title. A person whom the reviewer would consider not unreasonable might suggest that 122 years of French railroads and the state is a subject much too complicated for treatment in 272 pages of text. Doukas has staked out a claim in a subject of comparative government toward which the brethren of our profession are singularly shy. But he has not yet "come up with the gold."—J. G. HEINBERG.

To students of international organization and those in the field of comparative government, Professor W. E. Rappard's recent book, *Cinq siècles de sécurité collective (1291–1798): les expériences de la Suisse sous le régime des pactes de secours mutuels* (Librairie de Recueil Sirey, pp. ix, 603) will be of genuine interest. As the author indicates in his Introduction, it is to the former group in particular that the book is addressed, since its purpose is to analyze the origin and development of the Swiss Confederation with a view to determining whether that experience can offer any lessons of value to recent and current rather incoherent attempts

at organization for peace on an international scale. Professor Rappard's conclusions may come as somewhat of a surprise to those familiar with his views on world organization. He finds that the success of the Swiss Confederation was due to certain factors peculiar to Switzerland, e.g., geography, the self-interested desire of neighbors for Swiss neutrality, the warlike nature of the Swiss people, which had won a reputation of invincibility shattered only by Napoleon. These factors, he points out, are not to be found in international organizations for collective security. Therefore, the only lesson to be drawn by the latter from Swiss experience is that without subordination to a superior power there is no assured security for a collective political group, as demonstrated by the conquest of Switzerland by French troops in Napoleonic times. In addition to its broader international appeal, Professor Rappard's book provides fascinating material for those interested in problems faced and ultimately overcome, with the result of one of the world's most stable governments. In both respects, the book is well worth reading.—D. BEATRICE MCCOWN.

For eighteen years, W. Cameron Forbes' two volumes on *The Philippine Islands* have been a standard reference. This work, "revised and condensed," has now been made available in a single-volume edition (Harvard University Press, 1945, pp. xv, 412, $5.00), with an appreciative foreword by Sergio Osmeña, at the time of publication president of the Philippine Commonwealth. The condensing has been well done; and the brief sketch of early Philippine history and of the life and customs of the Filipino people provides an adequate framework for a well-written account of developments under American rule. In certain other respects, however, the revision has been less satisfactory, for the reader who expects to find here any satisfactory treatment of events since 1928 will be thoroughly disappointed. Except on p. 10—where a single line gives the population figures for 1940—none of the statistics refer to dates later than 1926, and the only substantial body of new material is a three-page summary (pp. 385–388) tracing the development of the independence movement since 1932. On p. 112, moreover, the revision leaves unchanged a statement which seems to demand at least a footnote modification. For here Mr. Forbes, commenting on secret service reports about insurrectionary movements during his term as governor-general, writes: "All such reports had to be taken with a grain of salt. Many of these reports, for example, indicated that the friendly neighboring country of Japan was conspiring with Filipino agitators to foment insurrection. . . . There was no evidence that the government of Japan gave any sanction to such movements. . . ." On the evidence that has become available since 1928, it is doubtful whether the author would bring in the same verdict. Despite these minor shortcomings, this new edition will be welcomed by all—and there should

be many—who feel the need for a convenient and reliable work of reference on the Philippines.—G. NYE STEIGER.

In his *Latin-American Civilization: Colonial Period* (Stackpole Sons, Harrisburg, Pa., 1946, pp. 812, $4.50), Professor Bailey W. Diffie has attempted to present the development of Latin America in a way that is rather refreshing. Instead of adhering to the orthodox style of historical writing which has tended to emphasize war and diplomacy, the author analyzes ideas and institutions. The work is divided into three books. In the first, Professor Diffie examines the "Foundations of Latin America." Of the subjects treated, the discussions of domestic and international trade, religion and the church, and government and administration deserve special mentioning. The second book is more historical, and deals with the "Evolution of Colonial Latin America to 1810." The stress is on social and economic forces and institutions, such as mining, agriculture, class conflicts, and the growth of the scientific spirit. The third, and last, book is focused on "Colonial Brazil." In view of the fact that Brazil is destined to become the most influential of the twenty Latin American states, the emphasis on, and the special treatment assigned to, that country seems justified. All in all, the book is a sound piece of scholarship and can be safely recommended as a text, its strength lying mainly in the skilful and well-thought-out organization of the material. A goodly number of attractive illustrations add a note of pleasure and enhanced enjoyment.—WILLIAM EBENSTEIN.

INTERNATIONAL LAW AND RELATIONS

In *Report on the Work of the League During the War* (League of Nations Publications, General 1945.2, pp. 167, $0.50), distributed by the International Documents Service of the Columbia University Press, Sean Lester, Acting Secretary-General, contends that the political activities of the League failed because "the statesmen and peoples of the League of Nations . . . contented themselves with lip-service, that they could not face the lesser sacrifices to avoid the greater," while some "peoples and states . . . foolishly imagined they could be lookers-on." There is much truth in Mr. Lester's analysis that states failed to use the machinery and powers of the League to the extent that they were available. It will probably also be true that states will continue to fail to use the full power available in the United Nations as long as they believe that national interests in the struggle for power are more important than the general welfare of the people of one world. The League had its successes, however, in the fields where it was clear to all states that international interests were more important than national interests. During the war, the greater part of the department dealing with economic, financial, and transit questions was

located at Princeton, where it collected important statistics and made several important economic studies. The International Labor Office continued functioning in Montreal. At Princeton, too, four volumes of studies on population trends in Europe and the Soviet Union were made. The health work of the League continued and helped to prevent the outbreak of typhus fever in Europe. Special measures were taken to control dangerous drugs. International assistance was rendered to refugees. The library at Geneva was maintained and increased. The records of the ratification of treaties were maintained; and during the war period, approximately one hundred and seventy volumes of publications were either published or prepared. One of the most useful features of the present book, indeed, is a complete list of League publications issued from January 1, 1940, to October 31, 1945, most of which will later be of service as reference works for university and college libraries.—JOHN B. MCCONAUGHY.

Dr. Herman Finer refers to his "America Looks Ahead" Pamphlet Series contribution as a "paper" and calls it *The United Nations Economic and Social Council* (World Peace Foundation, 1946, pp. 121, $0.50). The description and title (and the same is true of the chapter headings) do less than justice to the work, which is a compact handbook of international economic and social agencies, a review of past experience and present provisions, and a consideration of current and future purposes and possibilities. The four chapters are examples of Dr. Finer's ability to organize material and to reach the essentials of a theme. The theme in this case is the necessity for genuine integration among the various special agencies established to deal with world social, economic, and humanitarian problems and development; and the urgency, further, for "coördinating, initiating, and supplementing activity" on the part of the Economic and Social Council, the General Assembly, and, for that matter, the Security Council. The chapters are: (I) "World Economic and Social Interdependence"; (II) "World Economic Purposes and World Agencies"; (III) "Charter Provisions for an Economic and Social Council"; and (IV) "The Tasks of the General Assembly and the Economic and Social Council." A brief summary (in Chapter I) of the economic and political thought ("controlling ideas") underlying proposals for specific agencies, the analysis of United Nations Charter provisions (all of III), and the suggestions (in IV) with reference to coördinating special functional agencies seem to me of particular value. The entire study, however, is worthy of its important subject.—J. WILLIAM ROBINSON.

Hoffman Nickerson's *Arms and Policy, 1939–1944* (G. P. Putnam's Sons, 1945, pp. xii, 356, $3.50) is spotted with caustic digs and asides, superficially gratuitous, at anything anti-aristocratic or faintly pro-

socialist. He refers tenderly to Irving Babbitt and Friedrich Hayek. Perhaps Major Nickerson should have been an eighteenth-century gentleman-officer, so nostalgic is he for professional armies led by gentlemen in wars for limited objectives untainted by social revolution or global implications. These views color his discussion of contemporary military problems. Part I, which restates the theses of his *Armed Horde* (Putman's, 1940), deals with the tactics and policies of the mass armies so unsavory to him. Part II is a competent exposition of the military policies and campaigns of the recent war until August, 1944. Part III, the most interesting to political scientists, vigorously attacks United States imperialism as a defense system which is trouble-making, expensive, and abortive, and denounces peacetime conscription as a monstrosity. Militarily inefficient, conscription disrupts the industrial system, which is critically important in modern warfare. Large effective factories and small *élite* forces provide safety. Holding forces, he is convinced, will give us time to build mass armies in wartime. Men who like power and regimentation and who misunderstand our defense needs, he insists, want conscription, which, in fact, is required, not for defense, but for imperialism, with its concomitant wars and interference with liberties. His discussion of Hawaii as an outpost rather than as a base for an extended chain of island forts should be considered by romantic imperialists. Discounting robot weapons considerably, Nickerson explains how the late war has demonstrated the superiority of guns over rifles and airplanes. Even though his views are warped by his longing for the days of pre-mass warfare, it is refreshing to find a scholarly military man who rejects conscription as unnecessary and undesirable and discards imperialism as extravagant and provocative.—GARLAND DOWNUM.

In *The Pattern of Pacific Security* (Royal Institute of International Affairs, 1946, pp. 73, $0.75), a number of Chatham House experts examine the problem of security in the Pacific and report their conclusions in rather precise form. In view of the broad definition they give to both the Pacific region and security, their task of outlining "the military, diplomatic, economic, and political measures necessary to provide a complete system" for the region becomes a very formidable project. While recognizing that the countries of this vast region have usually a character and outlook which are not solely Pacific, but which link them more or less closely to other parts of the world, they hold, nevertheless, that there are important questions which are "mainly Pacific in origin and nature" and that, therefore, specifically Pacific organs to deal with them are justified. Because of the marked differences of character between different parts of the Pacific region, they suggest sub-regional organs within the framework of the Pacific organization. This organization would ultimately have the counter-

part of practically all of the chief organs of the United Nations. Whether a regional association so formidable could successfully operate within the framework of a universal organization may be open to question. But in any case, this highly condensed report, with its large number of specific proposals, deserves careful perusal by all interested in the problems of the Pacific.—AMRY VANDENBOSCH.

The title of Arnold D. Margolin's *From a Political Diary: Russia, the Ukraine, and America, 1905–1945* (Columbia University Press, 1946, pp. viii, 250, $3.00) is misleading, for much of the volume is a commentary bearing the stamp of later and not contemporary composition. Margolin, a native of Kiev and a lawyer by profession, took an active part in the revolutions of 1917–18. The three chapters dealing with the attempt to found a Ukrainian state after the last war are very worth-while. Here Margolin speaks very much at first hand. Additional light is thrown on Ukrainian-French-English relations during this period. The draft text of a French-Ukrainian treaty which ultimately failed to be ratified is presented in an appendix, along with a number of other interesting documents of this period. Margolin, now an American citizen and a member of the Massachusetts bar, migrated to America in 1922. On his own initiative, he made contacts with men at the State Department (particularly after 1933), and as a student of Eastern European affairs submitted to them many memoranda. The latter part of the volume is largely devoted to these, and, read today, there is a certain "I told you so" ring to them. In drawing an analogy between 1815 and the present day, Margolin is confused and inaccurrate with respect to the interrelationship of the Holy Alliance, the Quadruple Alliance, and the Treaty of Vienna.—E. C. HELMREICH.

The Four Cornerstones of Peace (McGraw-Hill, 1946, pp. xxiv, 266, $2.50), by Vera Micheles Dean, was one of the first books to appear from which the general reader might learn how the United Nations was created. The volume shows some evidences of having been put together in haste, but it is solid and reliable and thought-inspiring, as Mrs. Dean's work usually is. The most significant issues and characteristic features of the new system are presented, although it has proved a little confusing to students to list "the ten" key points—no more and no less. The four cornerstones are the documents of Dumbarton Oaks, Yalta, Mexico City, and San Francisco. Potsdam is added as a somewhat irrelevant postscript, and the space given to it might better have been given to further exposition of the Charter. A total of 115 pages of appendices give the documents of the four conferences and, in addition, the treaties between the Soviet Union on the one hand and the United Kingdom, France, and Czechoslovakia on the other. All are tied together by an introductory chapter re-

lating this effort to the League of Nations and to the problem of collective security, and by a useful final chapter appealing to the voter and explaining to him his responsibility under our system of government.—CLYDE EAGLETON.

POLITICAL THEORY AND MISCELLANEOUS

In *Economic Progress and Social Security* (Macmillan Co., 1945, pp. xii, 362, $5.00), A. G. B. Fisher analyzes the relationship between those two concepts and explores the policy that government should follow if the two are to be made compatible. His interest is in the constantly changing structure of the economy, by which a rising standard of living is made possible. This leads him to stress those aspects of social security that are most likely to help the economy at its "growing points." A full employment policy is interpreted to imply the opening of new employment opportunities, rather than preservation of particular kinds of work in particular industries or localities. An adequate supply of housing is regarded as an inducement to people to move from declining to rising industry. Education is envisaged as a means of preparing workers for occupational flexibility and equipping them for new and better-paid openings. Income security by social insurance and social assistance is thought of as a means of fostering mobility by making people more willing to take risks; and for this purpose it is suggested that coverage be extended to the self-employed as well as to wage-earners, that the unemployed be retrained for transfer to more needed occupations, and that financing should be on a national scale and should not be confined to particular localities, occupations, or concerns. As might be expected of a professor at Chatham House, Allan Fisher gives considerable attention to the international implications of internal policies designed to promote structural change. Like most present-day British economists, he stands for "stable expansion"; but, while the anticyclicalists stress stability, Fisher stresses expansion. In these new and refreshing ways, this book does much to clarify the economic rôle of government in the mid-twentieth century.—W. HARDY WICKWAR.

In *The 21st Century Looks Back* (William-Frederick Press, 1946, pp. v, 241, $2.75), Emanuel R. Posnack proposes "to develop in the average reader an understanding of world affairs, political economy, and finance, and arouse an interest in social problems, technology, education, and public welfare" (pp. i–ii). Primary emphasis is placed upon economics. Among the many interesting proposals designed to transform the capitalistic system from an economy of scarcity to one of plenty are that all public utilities be government-owned and operated on a non-profit basis; that "trade-restraining" private monopolies be abolished; that the government participate in "crucial" industries to ensure fair play in private business; that all government revenue be obtained from the earnings of

government business enterprises, from taxes on gifts, legacies, and incomes, and from the socialization of economic rent; and that international free flow of goods and labor be guided by information relating to world-wide conditions of supply and demand furnished by a "Global Statistical Service." Approximately one-fifth of the book comprises an analysis and refutation of the theory and practice of Communism. Other subjects touched upon are anti-semitism, world government, health, and education. Whatever the economists may think of the author's treatment of economic problems, his suggestions relating to world politics suffer in many instances from over-simplification, misplaced emphasis, and naïveté —a result due in part possibly to the belief that ignorance is "the basic cause for strife among men" (p. 208). Moreover, the device of projecting the reader into the next century—reminiscent of Bellamy's *Looking Backward*—purportedly in the interest of clarity of perception, at times produces the opposite effect, for it is not always perfectly clear whether a particular forecast represents a proposed goal of human endeavor or merely the prediction of an inexorable trend of events. However, the book commends itself to the average layman as a readable and thoughtful treatment of complex subject-matter, written in an uninvolved manner and with the best of good-will.—J. S. G. CARSON.

We are living in a touchy postwar period and experiencing the extreme hatreds and tensions which were a phenomenon of the 1920's. Intergroup tension is showing itself in frightening proportions on both the national and the international scale. We are being told repeatedly that unless we can solve some of our problems of democratic living here at home it is futile to talk to other nations and empires about their minorities problems. The Sixteenth Yearbook of the National Council for the Social Studies, *Democratic Human Relations* (Washington, D. C., 1946, pp. xv, 366, $2.00) constitutes—to quote the sub-title—a timely guide to "promising practices in intergroup and intercultural education in the social studies." The co-editors are Hilda Taba and William Van Til, representing the National Council of Christians and Jews and the Bureau for Intercultural Education, as well as the National Council for the Social Studies. The coöperation of these three organizations made the Yearbook possible. A sub-committee of the last-named organization supervised the project, and several hundred teachers from every part of the country contributed the description of practices which constitutes the bulk of the volume. The plan of the book is comprehensive. After describing purposes, general curriculum problems involved, and the planning of learning activities, there follows what will perhaps be the most useful part of the book—a description of promising practices in the schools, typical study units, school activities, the use of the community, and the guidance problem. Finally there is a discussion of basic concepts in the education of ethnic

and lower class groups, of materials and sources, and an evaluation of the practices described. By far the greater part of the practices described are concerned with our Number One minority problem—that of sharing our democratic way of life with our thirteen million Negro neighbors and fellow-citizens. There is some reference to practices involving a better understanding between Jews, Mexicans, and other minority groups and the dominant majorities in our population and schools. The Yearbook makes very little reference to a second major problem which is the cause of much tension and friction, i.e., that of relations between the religious groups of the nation. Perhaps this aspect of our national life is deserving of a separate study. On the whole, the Yearbook should be well received and should set patterns for an honest facing and solving of some of the inconsistencies in our practice of democracy.—BURR W. PHILLIPS.

One year after the conclusion of World War II, group prejudice—racial, religious, economic, and political—still prevails throughout the world and is a source of internal friction and international conflict. Victory of the democracies in the greatest triumph of coöperative effort of all time somehow failed to teach men the necessity of coöperation in a common effort for the welfare of all. The problem remains to be solved. How can it be solved? Is it primarily a public or a private problem? Should the solutions be found in laws and penalities or in education and enlightenment? The editors of *The Annals of the American Academy of Political and Social Science* have rendered a useful service to those who seek solutions. Twenty-two articles in the March, 1946, number are devoted to the problem of "Controlling Group Prejudice," and are conveniently grouped under such headings as Education, Industry and Business, Housing, Private Agencies, Communications and Entertainment, and Research Activities. Thirty-one distinguished authorities drawn from a wide variety of fields participated in their preparation. There is the inevitable variation in quality. Nevertheless, a high level of scholarship and objectivity is maintained throughout. The central theme is race conflict in our own country. The story of such conflict here, however, is the story of race conflict everywhere, and the solutions are the same for all group conflict. The authors recognize difficulties frankly and make no pretense at easy solutions. There are, however, no defeatists among them. Progress, they insist, is being made. And yet there is no defense of the inevitability of gradualness. Positive programs of action are presented and warnings sounded against failure to follow such programs if we are to survive in this atomic age.—E. ALLEN HELMS.

Studying Law (Washington Square Publishing Corporation, 1946, pp. viii, 753, $4.75) is a selection of articles from the works of nine well-known writers of the present or not distant past, including an introduction

and one article by the editor, Arthur T. Vanderbilt. Each of the following contributed one article or more to the group: Albert J. Beveridge, John M. Zane, Munro Smith, Roscoe Pound, Arthur L. Goodhart, Eugene Wambaugh, John H. Wigmore, and Charles B. Stevens. The book, according to the editor, was designed "especially for the young man now serving his country who may be contemplating the study of the law." Undoubtedly it would be useful to such a person, but the reviewer believes it more likely to appeal to certain other types of persons. Less than two pages of Beveridge's "The Young Lawyer and His Beginnings" would appeal to a person "contemplating the study of the law"; whereas, eighteen pages are devoted to the young lawyer. Zane's "Five Ages of Law" and Smith's "Elements of Law" would appeal somewhat to the general reader, but one trained in the law would have a much better chance of getting the full meaning of the articles. Articles like "Rules of Evidence" by Wigmore and "Decisions and Statutes" by Wambaugh are such as to be interesting and useful to a law student, a practitioner, or a political scientist or other layman with only a casual or indirect interest in the technical aspects of the law. In his selection on "Pre-legal Education" Mr. Vanderbilt presents a part of an American Bar Association Committee report on prelegal education. Pre-law students, or one interested in counseling such students, will find this section very useful. Anyone who has an interest in the development or nature of Anglo-American law will find the selection of articles worth while.—P. S. SIKES.

An abridged one-volume edition of *Introduction to Social Science* (Macmillan Co., 1946, pp. xii, 787, $4.00), by George C. Atteberry, John L. Auble, and Elgin F. Hunt, takes from the two volumes published in 1941 and 1942 the chapters dealing with the problems "believed to have a peculiar relevance to our time." Since this was given as the reason for the original selection,[1] its use without some further criterion fails to explain why many of the problems analyzed in the larger edition are ignored. For instance, the chapter on "Public Revenue and Taxation" is retained, but not the one on "Public Expenditures." Perhaps the authors concluded that the problem of obtaining revenue is more pressing; but any inquiring student would want to know what is being done with the billions collected. It was obviously easier to take whole chapters, revising them slightly, than it would have been to condense the discussion of every problem. Even this less arduous task was not too carefully done. Rather typical is a footnote on page 43 in the 1946 edition which refers to a volume "In press." The same footnote was in the first volume (1941), on page 292. That seems to establish a record for publishing a book, even under wartime conditions!—HOWARD WHITE.

[1] See this REVIEW, Oct., 1942, pp. 980–982.

RECENT PUBLICATIONS OF POLITICAL INTEREST

BOOKS AND PERIODICALS

MULFORD Q. SIBLEY
AND
MARJORIE H. SIBLEY
University of Illinois

AMERICAN GOVERNMENT AND PUBLIC LAW

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(Those interested in tracing legislative intent, or in working up an exhibit showing legislative process, would do well to secure *committee prints* of S. 7, 79th Cong., 1st Sess., a bill to prescribe fair administrative procedure, and the corresponding (and numerous) House bills; together with hearings and reports. Committee prints are rather difficult to procure, but often show a great deal not found in other prints. For example, Committee print, S. 7, 79th Cong., 1st Sess., shows in four parallel columns, respectively the bill, revised text tentatively proposed after informal conferences with interested parties, explanation of provisions with reference to Report of Attorney General's committee and other authorities, and suggestions and objections of interested parties with reference to revised text. There is also a separately published chart, on thick paper, analyzing the act somewhat graphically, from various points of view. Completing this are the various forms of the proposed act.)

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2469. The credit to Britain—The key to expanded trade. Address by Dean

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2477 The credit to Britain and world trade. Address by Dean Acheson, Under Secretary of State, February, 1946. Washington: Govt. Ptg. Off., 1946. 21 p. (Commercial policy series 84)

2522. Report of the Allied mission to observe the Greek elections, including 1. Main findings of the planning and sampling staff; 2, Statement of the method used; 3, Description of the sample surveys. Washington: Govt. Ptg. Off., 1946, 36 p.

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In view of the commotion over the use of so-called secret documents by unauthorized persons recently, and the absence of an effective statute covering the subject, Departmental regulation 420.1 "Use of records by persons who are not officials of the United States government," issue of May 5, page 779, is pertinent.

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